

DISTRICT OF COLUMBIA  
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ALCOHOLIC BEVERAGE CONTROL BOARD  
+ + + + +  
MEETING

IN THE MATTER OF:

Clover Capitol Hill, LLC  
t/a Tortilla Coast  
400 1st Street, SE  
Retailer CR - ANC-6B  
License No. 85922  
Case #13-PRO-00165  
  
(Substantial Change -  
Entertainment Endorsement/  
Karaoke)

Protest  
Hearing

April 9, 2014

The Alcoholic Beverage Control Board met in the Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street, N.W., Suite 400S, Washington, D.C. 20009, Chairperson Ruthanne Miller, presiding.

PRESENT:

RUTHANNE MILLER, Chairperson  
NICK ALBERTI, Member  
DONALD BROOKS, Member  
HERMAN JONES, Member  
MIKE SILVERSTEIN, Member  
HECTOR RODRIGUEZ, Member  
JAMES SHORT, Member

ALSO PRESENT:

JASON PERU, ABRA Investigator

1 P-R-O-C-E-E-D-I-N-G-S

2 (1:55 p.m.)

3 CHAIRPERSON MILLER: Good

4 afternoon. We do have more Board Members that  
5 will be joining us momentarily, but I know you  
6 have been waiting a while, so I'm going to  
7 start and call the case, which is Case No. 13-  
8 PRO-00165, Tortilla Coast located at 400 1st  
9 Street, S.E., License No. 85922, in ANC-6B.  
10 And this is a Protest Hearing regarding  
11 substantial change.

12 All right. Let's start with  
13 introductions.

14 MR. SULLIVAN: Hi, I'm Brian  
15 Sullivan. I'm the owner of the -- one of the  
16 owners of the restaurant.

17 CHAIRPERSON MILLER: Okay.

18 MS. LOVELAND: Sara Loveland. I'm  
19 the ANC Commissioner for Single Member  
20 District 6B07 and the Chair of ANC-6B,  
21 Alcoholic Beverage Commission.

22 CHAIRPERSON MILLER: Okay. Sara

1 Loveland?

2 MS. LOVELAND: Um-hum.

3 CHAIRPERSON MILLER: Okay.

4 MR. FLAHAVEN: Brian Flahaven,  
5 Chair of Advisory Neighborhood Commission 6B.

6 CHAIRPERSON MILLER: Okay.

7 MS. EADS-ROLE: Susan Eads-Role,  
8 Executive Director, ANC-6B.

9 CHAIRPERSON MILLER: Okay. And  
10 you are all here together on behalf of ANC-6B,  
11 correct?

12 MS. EADS-ROLE: Yes.

13 CHAIRPERSON MILLER: Okay. Good.  
14 I know we have a preliminary issue that the  
15 Board is going to vote on, which is the Motion  
16 to Dismiss that was filed by ANC-6B because of  
17 not receiving in the time set forth in the PIF  
18 the -- the time set forth, I'm sorry, in our  
19 instructions the PIF in time or in the time  
20 that we said it should be filed, which is  
21 seven days ahead of time.

22 So I think maybe we will just --

1 well, let me just ask one question before we  
2 do that. Mr. Sullivan, is it just you? Are  
3 you the only witness?

4 MR. SULLIVAN: Just me.

5 CHAIRPERSON MILLER: Okay. Okay.

6 And so we have all read the papers and we  
7 think it's a pretty simple issue and don't  
8 want to take the time to hear oral argument on  
9 this Motion to Dismiss.

10 So I am actually going to move to  
11 deny the Motion to Dismiss. Do I have a  
12 second?

13 MEMBER SHORT: Second.

14 CHAIRPERSON MILLER: Okay. And  
15 the reason being that the PIF and those time  
16 requirements are not regulations, but they are  
17 guidance for us to conduct the hearings in a  
18 manner that no party is prejudiced and that  
19 every party has sufficient notice of the  
20 proceedings in order that there be a fair  
21 hearing.

22 MEMBER SILVERSTEIN: Madam Chair,

1 I would like to amend that to read that we  
2 will dismiss it with the understanding that no  
3 witness other than a single witness of the  
4 licensee may be called per the PIF.

5 CHAIRPERSON MILLER: It's not an  
6 issue. There is no other witness. He just  
7 said he was the only witness. Anyway, because  
8 of that, because he is also the only witness,  
9 a party is always allowed to be a witness  
10 regardless if they are identified on the PIF,  
11 I don't see any prejudice in this case in  
12 moving forward.

13 So any other comments? Okay.

14 Then all those in favor then to  
15 deny the Motion to Dismiss say aye.

16 ALL: Aye.

17 CHAIRPERSON MILLER: All those  
18 opposed? All those abstaining? The motion  
19 passes 5-0-0.

20 Okay. Now, I just want to ask you  
21 all if you have any other preliminary issues  
22 or questions? I can go over the procedure if

1 people aren't familiar with that. Go ahead.

2 MR. FLAHAVEN: Let me just add.

3 CHAIRPERSON MILLER: Okay.

4 MR. FLAHAVEN: I think that would  
5 be helpful, but I just want to just make sure  
6 and I'm assuming that you saw the supplemental  
7 information that was submitted also with the  
8 Motion to Dismiss yesterday?

9 CHAIRPERSON MILLER: What  
10 supplemental information?

11 MR. FLAHAVEN: There was a  
12 supplemental information sent that was  
13 submitted to the Board related to -- it was  
14 additional information, Exhibits 5, 6 and 7,  
15 submitted yesterday and copied to the  
16 applicant. That was further information  
17 related to the Motion to Dismiss.

18 CHAIRPERSON MILLER: I'm not sure  
19 we even have it now to tell you the truth.  
20 What is 5, 6 and 7?

21 MR. FLAHAVEN: So with my -- with  
22 the initial Motion to Dismiss, there were, I

1 believe, I'll look at my exhibits, four  
2 exhibits. And then I submitted yesterday or  
3 ANC-6B submitted supplemental information and  
4 we sent it to Ms. Anderson, copied ABRA staff  
5 and copied the applicant as well just with  
6 further additional supplemental information  
7 related to the Motion to Dismiss and it  
8 provides what we thought or what we say in our  
9 motion or I should say in our supplemental  
10 information the full context of recent  
11 decisions and the application of Procedural  
12 Rules with respect to both parties.

13 And in particular, we requested  
14 that the ABC Board consistently apply the  
15 Procedural Rules to both parties and that's  
16 what the exhibits speak to.

17 CHAIRPERSON MILLER: Okay.

18 MR. FLAHAVEN: I can walk through  
19 the exhibits if you would like.

20 CHAIRPERSON MILLER: No.

21 MEMBER SILVERSTEIN: No.

22 CHAIRPERSON MILLER: If that's

1     what they speak to, we consider that point  
2     and --

3                   MR. FLAHAVEN:  You have considered  
4     the supplemental information?

5                   CHAIRPERSON MILLER:  No, but it  
6     sounds like -- we will look at it later then.  
7     It just sounds like if you are saying that we  
8     consider that the Procedural Rules be applied  
9     fairly to both sides, we have considered that.  
10    And we have, I mean, that's basic.

11                   So I would just refer you back to  
12    the instructions that I say.  I don't want to  
13    belabor this, because we already ruled, but  
14    because you bring that up, you know, the  
15    instructions that we give, that I give at the  
16    status says that, you know, may be excluded or  
17    may -- and they may be if we find that there  
18    is prejudice or whatever or no good cause.

19                   But in this case, we did consider  
20    those things and did not find prejudice rising  
21    to that level.  So, okay.  I think we are  
22    going to move on.



1                   And I can tell you the order of  
2                   procedure is that the licensee would do an  
3                   opening statement, if you choose, and then you  
4                   would do an opening statement, should you  
5                   choose. And then we hear from our  
6                   Investigator, who did the report that you all  
7                   should have on this case.

8                   MEMBER ALBERTI: So have we voted  
9                   on the motion?

10                  CHAIRPERSON MILLER: Yes, you  
11                  missed it.

12                  MEMBER ALBERTI: Okay. Fine.

13                  CHAIRPERSON MILLER: It was 5-0-0.

14                  MEMBER ALBERTI: I'm sorry, I was  
15                  distracted. That's fine.

16                  CHAIRPERSON MILLER: And then the  
17                  applicant goes after our Investigator with his  
18                  case. And also I would like to say that after  
19                  our Board witness testifies, we all can ask  
20                  questions. The Board asks questions, you all  
21                  ask questions. And that order of procedure  
22                  for those questions are the Board, the

1 applicant and then the protestants.

2 And then the applicant puts his  
3 witnesses up. Then you can ask questions and  
4 then the Board can ask questions. And then  
5 applicant has the burden of proof. And then  
6 you present your case and applicant asks  
7 questions and the Board asks questions. And  
8 then closings.

9 MR. FLAHAVEN: All right. Could I  
10 just ask a question? The applicant has not  
11 indicated witnesses. I was unaware that he  
12 could actually be a witness without listing  
13 that he is a witness. Obviously, I put myself  
14 as a potential witness on there, but -- as a  
15 witness.

16 My question is when he presents  
17 his case, how does he present his case when  
18 there is not a witness?

19 CHAIRPERSON MILLER: If he is the  
20 only one, he testifies.

21 MR. FLAHAVEN: He just goes up  
22 there and say what he wants to say?

1 CHAIRPERSON MILLER: Yes.

2 MR. FLAHAVEN: Okay.

3 CHAIRPERSON MILLER: And he is  
4 subject to cross-examination like any other  
5 witness.

6 MR. FLAHAVEN: Okay.

7 CHAIRPERSON MILLER: Okay. All  
8 right. And then if you have questions along--  
9 oh, let me give you time. I think you have  
10 been sent information about time, but just in  
11 case, each side has a maximum of five minutes  
12 each for opening and five minutes for closing.  
13 And then in between that, you have a maximum  
14 of an hour and a half.

15 And please don't try to fill your  
16 maximum, it's just, you know --

17 MR. FLAHAVEN: Okay.

18 CHAIRPERSON MILLER: Okay. It is  
19 timed by your witness' testimony and then your  
20 questions of witnesses. And then when your  
21 witness is being questioned by the other side,  
22 it's their time.

1                   Okay. All right. Any questions?  
2                   You can ask what your time is along the way,  
3                   okay, or we may tell you. Okay. Yeah, right,  
4                   no, opening statements. Opening statements  
5                   first.

6                   All right. We are ready for the  
7                   applicant's opening statement, if you have  
8                   one. It's not required.

9                   MR. SULLIVAN: I'll be brief.

10                  CHAIRPERSON MILLER: Okay.

11                  MR. SULLIVAN: I start off by  
12                  genuinely thanking and appreciating the ANC  
13                  for their obvious efforts to represent their  
14                  constituents and the people that live in the  
15                  neighborhood. And I understand their approach  
16                  and what they are trying to do.

17                  I feel as though in this instance,  
18                  relative to the entertainment license,  
19                  however, the position that they have taken in  
20                  terms of protesting it does not measure up in  
21                  terms of qualifying as to why it should be  
22                  protested and eventually dismissed, in the

1     sense that I believe that part of the matter  
2     is noise concerns.

3             And so I don't know that  
4     significant or sufficient evidence has been  
5     shown that we, as an organization, the  
6     Tortilla Coast entity, has had an issue with  
7     noise in the past, consisting of complaints  
8     from neighbors or, quite frankly, the ANC.  
9     And so therefore, I have measured this in  
10    terms of our case relative to we are applying  
11    for an entertainment license and where we meet  
12    the standard in terms of all the laws that  
13    DCRA, ABRA, etcetera, measures against  
14    relative to noise, how we have done in the  
15    past and we can do in the future.

16            I feel as though we made an  
17    effort, especially with the hours that we  
18    requested. I don't think -- and when we met  
19    with the mediator she agreed, they were  
20    actually very reasonable in terms of the --  
21    when we had stopped with the entertainment in  
22    our building. And so I feel as though

1 throughout the process, we have tried to be  
2 reasonable and also think about who we  
3 actually have in the neighborhood.

4 From my standpoint, there is no  
5 benefit to not having a good relationship with  
6 your neighbors. In fact, it's a detriment to  
7 the success of your business and we have  
8 always believed that and felt that way. And  
9 so when we applied, we try to take that into  
10 account and I feel as though we did.

11 CHAIRPERSON MILLER: Okay. Thank  
12 you.

13 MR. FLAHAVEN: Good afternoon and  
14 I want to thank you, Madam Chair and the  
15 Board, for the opportunity to appear before  
16 you on this case. Advisory Neighborhood  
17 Commission 6B urges the Board to deny the  
18 applicant's Tortilla Coast license application  
19 for a substantial change on the grounds of  
20 impact to peace, order and quiet of the  
21 surrounding neighborhood.

22 We are concerned that the addition

1 of live entertainment at the establishment  
2 will increase noise in the surrounding  
3 residential neighborhood. We have  
4 demonstrated that the Tortilla Coast is  
5 located within a residential block and has an  
6 enclosed patio with floor to ceiling windows  
7 that surround the perimeter of the  
8 establishment.

9           These windows can be opened or  
10 often opened in warm weather. ANC-6B is  
11 concerned that live entertainment inside the  
12 patio structure taking place with the windows  
13 and doors open will generate significant noise  
14 in the residential neighborhood.

15           ANC-6B will also present evidence  
16 of crimes taking place at or around the  
17 establishment over the past year including  
18 more than 20 police calls for service. Our  
19 commission is reluctant to support add-ons to  
20 an existing establishment's license, like an  
21 entertainment endorsement, when there is  
22 evidence that this type of activity is taking

1 place.

2 This is particularly true of  
3 establishments where we do not have a signed  
4 settlement agreement. We will present  
5 evidence on management issues at Tortilla  
6 Coast. In particular, at the mediation  
7 hearing, the applicant stated that we could  
8 rely on calling him if there are issues, but,  
9 as you know, his -- there should be an ABC  
10 manager on duty at all times. There should be  
11 a contact at the location, not at a corporate  
12 office that we can get to and we will show  
13 evidence of the fact that there have been  
14 issues with having an ABC manager on duty.

15 ANC-6B has raised our concerns  
16 with the applicant and has attempted in good  
17 faith to negotiate. We always pursue  
18 negotiations with ABC establishments in our  
19 commission area and try to address noise and  
20 other concerns related to peace, order and  
21 quiet in settlement agreements.

22 Unfortunately, when we raised our



1 concerns with the applicant, the applicant has  
2 refused to negotiate or consider signing a  
3 settlement agreement addressing our concerns.  
4 During mediation, the applicant stated that  
5 they planned to follow current regulations and  
6 that the ownership saw no need to sign an  
7 agreement that is "duplicative."

8 While some provisions in our  
9 settlement agreement like all ANC settlement  
10 agreements reflect current regulations, other  
11 provisions do not, such as those on disposable  
12 bottles, commercial trash pickup times and  
13 rodent control.

14 In addition, given the nature of  
15 our request, we would have liked to discuss  
16 with the applicant language-related to the  
17 placement of the karaoke equipment and  
18 speakers, so as to minimize noise.

19 We will demonstrate that the  
20 applicant also has shown a willingness to work  
21 with other Advisory Neighborhood Commissions  
22 in the past on issues related to noise and

1 other issues related to establishments. All  
2 other ABC establishments within our commission  
3 area that have entertainment endorsements have  
4 settlement agreements and we will show that.

5 And we -- of all of the  
6 establishments that we have that are like or  
7 similar to Tortilla Coast, which we count as  
8 58, 53 of them have settlement agreements with  
9 the commission. And as I said, all 11 with  
10 entertainment endorsements have settlement  
11 agreements with the commission addressing our  
12 concerns and the neighborhood concerns.

13 So we feel that we have been  
14 extremely reasonable. We have tried to reach  
15 out to come to an agreement to negotiate. We  
16 didn't offer a knee-jerk opposition to the  
17 entertainment endorsement. We want to try --  
18 we tried very earnestly to reach an agreement,  
19 but, obviously, there has not been a  
20 willingness on the applicant's side to  
21 negotiate.

22 So based on these reasons and the

1 evidence we will present, we urge the Board to  
2 deny the applicant's substantial change  
3 request.

4 CHAIRPERSON MILLER: Okay. Thank  
5 you. I just want to make one more comment.  
6 And that is the Board -- it's a fine line.  
7 The Board doesn't want to get into settlement  
8 agreements too much or who bargained in good  
9 faith or who didn't, because we want that  
10 process to be pure and not contaminated by the  
11 fact that oh, then later parties will come to  
12 the Board and talk about the settlement  
13 process.

14 So I just want you to know that  
15 here, in general, though it is the  
16 alternative. You didn't get to have  
17 conditions you wanted in a settlement  
18 agreement. This is the place where you tell  
19 us, you know, what are the adverse impacts and  
20 so what conditions should the Board put on the  
21 license in an order. Okay?

22 MR. FLAHAVEN: Okay.

1 CHAIRPERSON MILLER: All right.

2 Thank you. Okay. We are ready for our  
3 witness then. Mr. Peru? Good afternoon.

4 INVESTIGATOR PERU: Good  
5 afternoon.

6 Whereupon,

7 INVESTIGATOR JASON PERU  
8 was called as a witness by the ABRA Board, and  
9 having been first duly sworn, assumed the  
10 witness stand and was examined and testified  
11 as follows:

12 CHAIRPERSON MILLER: Okay. Thank  
13 you.

14 DIRECT EXAMINATION

15 INVESTIGATOR PERU: Investigator  
16 Jason Peru.

17 CHAIRPERSON MILLER: Oh, that's  
18 good. So whenever you are ready.

19 INVESTIGATOR PERU: Okay. I was  
20 assigned the protest report of Clover Logan  
21 Circle, LLC t/a Tortilla Coast located at 400  
22 1st Street, S.E. It was referenced to us as a

1 substantial change adding an entertainment  
2 endorsement.

3 The application is being protested  
4 by ANC-6B represented by Brian Flahaven.

5 MR. FLAHAVEN: That's close.

6 INVESTIGATOR PERU: Is that close  
7 enough? All right. And the concerns are  
8 ABRA's impact on peace, order and quiet. I  
9 spoke to Mr. Flahaven on April 1st on the  
10 phone and he stated that primary concerns of  
11 the ANC was the potential noise that an  
12 entertainment endorsement would bring to the  
13 establishment.

14 He stated that ANC-6B proposed a  
15 settlement agreement to the licensee, but was  
16 unable to reach an agreement. He also stated  
17 that ANC-6B was not concerned about the hours  
18 of the entertainment, but concerned about the  
19 sliding windows and doors being opened during  
20 entertainment hours and the placement of the  
21 establishment's speakers.

22 He also stated that the sound

1 already travels throughout the residential  
2 area and music would add to the existing noise  
3 levels.

4 I also spoke to a representative  
5 from Tortilla Coast, Ms. Rachel Dick, on March  
6 27th. Ms. Dick stated that she was aware of  
7 6B's concerns, but felt that the establishment  
8 was already following ABRA Regulations. She  
9 stated that she did not have a meeting  
10 scheduled with ANC-6B and felt there was no  
11 point in signing a settlement agreement.

12 Ms. Dick stated that the  
13 establishment requested an entertainment  
14 endorsement, so that they may offer karaoke  
15 several times a week and live music on Cinco  
16 de Mayo. Ms. Dick stated that the  
17 establishment had no plans on having a DJ or  
18 charging a cover charge.

19 So Tortilla Coast is located,  
20 according to the Zoning Map, in a C-2-A Zone,  
21 which is described as permits a matter-of-  
22 right low-density development, including

1 office employment centers, shopping centers,  
2 medium-bulk mixed-use centers and housing to  
3 a maximum lot occupancy of 60 percent  
4 residential use, 100 percent for all other  
5 uses and a maximum FAR of 2.5 residential and  
6 1.5 FAR for other permitted uses, maximum  
7 height of 50 feet, rear yard requirements are  
8 15 feet, detached dwellings are one-family,  
9 semi-detached dwelling side yards are 8 feet.

10 So based on that, the nearby  
11 establishments, according to the GIS system,  
12 within 1,200 feet of Tortilla Coast, there is  
13 nine licensed-ABC establishments within 1,200  
14 feet. Out of the nine, two have entertainment  
15 endorsements and four have settlement  
16 agreements.

17 As you can see, I have separated  
18 them out in the report, but just for the  
19 record as well, the entertainment  
20 endorsements, according to ABRA records that  
21 I found, the two that have entertainment, out  
22 of the two that have entertainment, only one

1 has a settlement agreement.

2 There are no schools within 400  
3 feet of Tortilla Coast.

4 And the proposed hours of  
5 operation for the entertainment, according to  
6 the application, is Sunday from 6:00 p.m. to  
7 9:00 p.m., Monday through Wednesday 6:00 p.m.  
8 to 10:00 p.m., Thursday from 6:00 p.m. to  
9 11:00 p.m., Friday 6:00 p.m. to 11:00 p.m. and  
10 Saturday 6:00 p.m. to 10:00 p.m.

11 The establishment was visited on  
12 several occasions by our Investigators, but,  
13 obviously, being that they currently don't  
14 have an entertainment endorsement, there was  
15 no type of speakers or loud noise heard coming  
16 from the establishment, at the time.

17 Normal levels of street traffic,  
18 pedestrian traffic on the streets.

19 I was not -- I was unable to get,  
20 at the time the report was written, the calls  
21 for service from MPD. However, Mr. Flahaven  
22 did have the calls for service from MPD that



1 he forwarded to me via email after and I  
2 believe you have that as an exhibit. I wasn't  
3 sure.

4 MR. FLAHAVEN: Yes.

5 INVESTIGATOR PERU: So at the time  
6 -- I do have the copy he send me and according  
7 to the copy he send me, it shows 22 calls for  
8 service between January 24, 2013 and March 3,  
9 2014.

10 Investigators visited the location  
11 on multiple -- during different times and once  
12 again, like I stated, at no time were ABRA  
13 violations observed. A regulatory inspection  
14 was conducted as well. There was an ABC  
15 manager on duty. And no violations were found  
16 during the regulatory inspection.

17 MEMBER ALBERTI: Madam Chair, I  
18 think the Investigator has finished his  
19 testimony.

20 CHAIRPERSON MILLER: Oh, you're  
21 finished?

22 INVESTIGATOR PERU: Oh, yes, I'm

1       sorry.

2                   CHAIRPERSON MILLER:   Oh, thank  
3       you.

4                   INVESTIGATOR PERU:   I'm sorry.

5                   CHAIRPERSON MILLER:   I didn't know  
6       you were finished.   All right.   So are there  
7       Board questions?   I have a Board question.

8                   MEMBER ALBERTI:   Well --

9                   CHAIRPERSON MILLER:   Oh, do you  
10      have?

11                  MEMBER ALBERTI:   You go ahead.  
12      I'm sorry.

13                  CHAIRPERSON MILLER:   All right.  
14      Sorry.   I just have one.   Do you know how long  
15      Tortilla Coast has been operating there?

16                  INVESTIGATOR PERU:   I'm sorry?

17                  CHAIRPERSON MILLER:   How long have  
18      they been operating?

19                  INVESTIGATOR PERU:   No.   The  
20      actual time, how many years they have been in  
21      business?   No, I do not.

22                  CHAIRPERSON MILLER:   Okay.   I'm

1     sure we will get that information later in the  
2     proceeding then. And the 22 calls for  
3     service, do you know anything about them?  
4     What kind of calls they were or --

5                 INVESTIGATOR PERU: You know, I'm  
6     looking at the printout that we received and  
7     that he forwarded to me.

8                 CHAIRPERSON MILLER: Um-hum.

9                 INVESTIGATOR PERU: There is --  
10    I'm assuming that -- it says DISO is  
11    disorderly calls. There is a bunch of other  
12    acronyms that I'm not sure what they are  
13    referring to.

14                CHAIRPERSON MILLER: Okay. Thank  
15    you. Mr. Alberti?

16                MEMBER ALBERTI: Yes. Good  
17    afternoon, Investigator Peru. Thank you for  
18    your report. So you visited this location  
19    several times and I assume took note of the  
20    neighborhood, right?

21                INVESTIGATOR PERU: Yes, sir.

22                MEMBER ALBERTI: Okay. So --

1 well, first of all, do you know the -- where  
2 the licensee sits is C-2-A. Do you know what  
3 the zone is for the surrounding area? This  
4 licensee is at an intersection, so I'm --

5 INVESTIGATOR PERU: Correct.

6 MEMBER ALBERTI: -- interested in  
7 the other squares that would be across the  
8 street and even down the block. Do you know  
9 what the zoning is there?

10 INVESTIGATOR PERU: I don't know  
11 the zoning. I know that there is residential  
12 place directly behind, because you are  
13 correct, they are at a corner and that  
14 intersection, they are the only establishment  
15 at that intersection. So the location is, I  
16 believe, D Street. So there, at that corner  
17 there, directly behind the establishment, next  
18 to the establishment around that corner are  
19 residential units.

20 MEMBER ALBERTI: Okay. So  
21 directly across the street I see a large  
22 square on the northeast corner. Is that

1 commercial or residential? Do you know? I'm  
2 looking at your map here.

3 INVESTIGATOR PERU: Yes.

4 MEMBER ALBERTI: That's in your  
5 report.

6 INVESTIGATOR PERU: I believe it  
7 is mixed across the street, because there is  
8 an office building located there as well.

9 MEMBER ALBERTI: Okay.

10 INVESTIGATOR PERU: And then going  
11 east from there, are those row houses that I  
12 see?

13 INVESTIGATOR PERU: Correct,  
14 correct.

15 MEMBER ALBERTI: Are they  
16 residential?

17 INVESTIGATOR PERU: Residential,  
18 yes.

19 MEMBER ALBERTI: Okay. On the  
20 same side of the street as the establishment  
21 going down, going east, along that block face,  
22 it looks like -- again, I know there is a

1 large building there just down the street. Do  
2 you know if that's residential?

3 INVESTIGATOR PERU: There is  
4 residential on that block, where you are  
5 referring to, behind the establishment.

6 MEMBER ALBERTI: Well, going east  
7 down that block.

8 INVESTIGATOR PERU: Going down 1st  
9 Street?

10 MEMBER ALBERTI: Yes.

11 INVESTIGATOR PERU: When you  
12 continue past Tortilla Coast, it becomes the  
13 Capitol Grounds and there is actually a  
14 security-gated area.

15 MEMBER ALBERTI: No, no, no. But  
16 I'm going east from there.

17 INVESTIGATOR PERU: Going east. I  
18 don't have that.

19 MEMBER ALBERTI: Going down D  
20 Street.

21 INVESTIGATOR PERU: Which --

22 MEMBER ALBERTI: Down D Street

1 east from there.

2 INVESTIGATOR PERU: I don't have  
3 the map. The map in my file, sorry, that's  
4 why.

5 MEMBER ALBERTI: Between 1st Street  
6 and 2nd Street.

7 INVESTIGATOR PERU: 1st Street and  
8 2nd Street? As you go towards 2nd Street, it's  
9 residential as well.

10 MEMBER ALBERTI: Okay.

11 INVESTIGATOR PERU: Correct.

12 MEMBER ALBERTI: And then directly  
13 across 1st Street on the same side of the  
14 street, is that residential or commercial?

15 INVESTIGATOR PERU: Directly  
16 across on the same side of the street?

17 MEMBER ALBERTI: Yeah.

18 INVESTIGATOR PERU: From Tortilla  
19 Coast?

20 MEMBER ALBERTI: Yeah.

21 INVESTIGATOR PERU: There is a  
22 large building you are referring to?

1                   MEMBER ALBERTI: No, actually  
2                   there isn't. It looks like row houses. Do  
3                   you know if those are residential or not? If  
4                   you don't know, that's fine.

5                   INVESTIGATOR PERU: I was --

6                   MEMBER ALBERTI: That would be the  
7                   southeast --

8                   INVESTIGATOR PERU: I have a  
9                   photo.

10                  MEMBER ALBERTI: -- corner.

11                  INVESTIGATOR PERU: The southeast  
12                  corner?

13                  MEMBER ALBERTI: Of that  
14                  intersection.

15                  INVESTIGATOR PERU: I'm --

16                  MEMBER ALBERTI: Or southwest  
17                  corner --

18                  INVESTIGATOR PERU: -- not sure.

19                  MEMBER ALBERTI: -- of that  
20                  intersection.

21                  INVESTIGATOR PERU: I'm not sure.  
22                  I have to look at the map again.



1                   MEMBER ALBERTI:   Okay.   And I  
2   think you noted that on the northwest corner  
3   is the Capitol Grounds.

4                   INVESTIGATOR PERU:   Yes, yes.

5                   MEMBER ALBERTI:   Okay.   All right.  
6   Can you describe the front --

7                   INVESTIGATOR PERU:   The front?

8                   MEMBER ALBERTI:   -- area of this,  
9   what it looks like?   The front of this  
10   restaurant that -- okay.   Both -- what's the  
11   front look like both on D Street and on 1st  
12   Street?

13                  INVESTIGATOR PERU:   It's like --  
14   you know, it appears to be -- well, it's all  
15   glass.   So the whole corner is glass and  
16   windows.   I believe they do open and they do  
17   slide open.

18                  MEMBER ALBERTI:   Okay.

19                  INVESTIGATOR PERU:   I know the  
20   time when I was out there the weather wasn't  
21   nice yet, so they were closed.   But I talked  
22   to the ABC manager and he said that the

1 windows do get opened during good weather.

2 MEMBER ALBERTI: And that's both  
3 sides, D Street and 1st Street?

4 INVESTIGATOR PERU: I know it's  
5 all glass on both sides. I'm not sure how  
6 much of that actually opens up.

7 MEMBER ALBERTI: Okay. Very good.  
8 No further questions. Thank you.

9 CHAIRPERSON MILLER: Okay.  
10 Others? I just have a couple more.

11 INVESTIGATOR PERU: Sure.

12 CHAIRPERSON MILLER: So I am  
13 looking at your Exhibit 4 to your protest  
14 report.

15 INVESTIGATOR PERU: Yes.

16 CHAIRPERSON MILLER: Okay. So  
17 there are two buildings right next to Tortilla  
18 Coast.

19 INVESTIGATOR PERU: I'm standing--  
20 yeah, I'm across the street from them taking  
21 a photo.

22 CHAIRPERSON MILLER: I'm not sure

1     what street it is. They look like two  
2     rowhouse-type of buildings.

3                 INVESTIGATOR PERU: Yes, yes.  
4     Behind -- directly behind them, yes. So  
5     Tortilla Coast that whole complete corner,  
6     directly behind them are residences.

7                 CHAIRPERSON MILLER: Okay. Behind  
8     what are residences?

9                 MEMBER SILVERSTEIN: On what  
10    street?

11                INVESTIGATOR PERU: On --

12                CHAIRPERSON MILLER: I can't --

13                INVESTIGATOR PERU: -- 1st Street.

14                CHAIRPERSON MILLER: 1st Street is  
15    the shorter part of the restaurant, where that  
16    is?

17                INVESTIGATOR PERU: Yes.

18                CHAIRPERSON MILLER: Okay.

19                INVESTIGATOR PERU: Going in this  
20    direction, yes.

21                CHAIRPERSON MILLER: And that's  
22    next to what looks like rowhouses?

1 INVESTIGATOR PERU: Yes.

2 CHAIRPERSON MILLER: Are they --  
3 these two rowhouses, are they commercial or  
4 residential?

5 INVESTIGATOR PERU: Residential.  
6 I do not see businesses there, no.

7 CHAIRPERSON MILLER: Okay.

8 MEMBER SILVERSTEIN: Bullfeathers?

9 INVESTIGATOR PERU: Is that at the  
10 corner? Could I see that? I don't have the  
11 photos. I'm sorry.

12 CHAIRPERSON MILLER: Yeah. Hold  
13 on.

14 MEMBER ALBERTI: Well, actually,  
15 let me -- I will --

16 CHAIRPERSON MILLER: Thank you.

17 MEMBER ALBERTI: -- hand  
18 Investigator Peru my copy of the map. Just  
19 lend him that copy of the map.

20 MEMBER BROOKS: Okay. But I was  
21 showing Exhibit 4 in particular.

22 MEMBER ALBERTI: Well, it should

1 be in there.

2 CHAIRPERSON MILLER: Oh, they are  
3 in there also. Okay.

4 MEMBER ALBERTI: It should be in  
5 there also.

6 INVESTIGATOR PERU: Yes. I know  
7 there is Bullfeather and Talay Thai is around  
8 that corner. Is that what you are referring  
9 to, Madam Chair?

10 CHAIRPERSON MILLER: I just was  
11 curious of the --

12 INVESTIGATOR PERU: Yes, so --

13 CHAIRPERSON MILLER: -- rowhouse  
14 that's white with --

15 INVESTIGATOR PERU: -- directly --

16 CHAIRPERSON MILLER: -- red on the  
17 side.

18 INVESTIGATOR PERU: Yes, yes. And  
19 right behind them. I'm sorry. Yes, there is.  
20 That's where Bullfeathers and Talay Thai  
21 restaurant are located.

22 CHAIRPERSON MILLER: Okay. So

1       those are commercial.

2                   INVESTIGATOR PERU:   Yes,  
3       commercial.   Yes, right behind them.   I'm  
4       sorry.

5                   CHAIRPERSON MILLER:   Okay.

6                   INVESTIGATOR PERU:   I got turned  
7       around on the map.

8                   CHAIRPERSON MILLER:   Okay.   That's  
9       very helpful.   And my other question is I  
10      think that you made reference to one  
11      establishment that has an entertainment  
12      endorsement.

13                  INVESTIGATOR PERU:   Yes, the  
14      Capitol Lounge has an entertainment  
15      endorsement as well as Sonoma Restaurant and  
16      Wine Bar.

17                  CHAIRPERSON MILLER:   Oh, okay.   So  
18      do you know their hours?   I mean, I'm  
19      interested in how these hours that are  
20      proposed compare to their hours.

21                  INVESTIGATOR PERU:   I don't have  
22      their entertainment hours.

1 CHAIRPERSON MILLER: Okay.

2 INVESTIGATOR PERU: I did not pull  
3 that. They both are located on Pennsylvania  
4 Avenue.

5 CHAIRPERSON MILLER: Okay.

6 INVESTIGATOR PERU: Which is quite  
7 a bit -- if you look at the -- I guess you  
8 mapped it, but still if you look at the map,  
9 it kind of shows how far they are away from  
10 Tortilla Coast.

11 CHAIRPERSON MILLER: Okay. Okay.

12 INVESTIGATOR PERU: So --

13 CHAIRPERSON MILLER: I got it.  
14 All right. Thank you. Anybody else? All  
15 right. Does the applicant have questions?

16 MR. SULLIVAN: Just a few.

17 CHAIRPERSON MILLER: Okay.

18 CROSS-EXAMINATION

19 MR. SULLIVAN: With reference to  
20 the MPD calls, I realize that they were sent  
21 to you by --

22 INVESTIGATOR PERU: That's

1 correct.

2 MR. SULLIVAN: Are you able to  
3 determine on that list where the call  
4 originated from?

5 INVESTIGATOR PERU: No, the way  
6 MPD has their calls for service listed it's  
7 just showing what District it's out of, which  
8 is 1D and then said show and the date and  
9 times. The times are listed on here as well.

10 MR. SULLIVAN: Okay.

11 INVESTIGATOR PERU: It's showing  
12 the event type and then the location that the  
13 call came from or that they responded to. It  
14 doesn't necessarily show the -- where the call  
15 actually originated from.

16 MR. SULLIVAN: Okay. And I see  
17 all the way to the far right on a few  
18 occasions, there is one, two, three, four, it  
19 actually does say Tortilla Coast. In the  
20 other instances, it says at Anton's  
21 Restaurant. Do you know what that's in  
22 reference to?



1                   INVESTIGATOR PERU: No. Like I  
2                   said, I received this via email. I did not --  
3                   I never got back an official report from MPD.

4                   MR. SULLIVAN: Okay.

5                   INVESTIGATOR PERU: Yeah.

6                   MR. SULLIVAN: So it's possible  
7                   that a number of these calls actually came  
8                   from the restaurant calling the police if  
9                   there was somebody in the restaurant who was  
10                  acting disorderly?

11                  INVESTIGATOR PERU: That's hard to  
12                  determine, because MPD bases this event search  
13                  strictly on the address/location.

14                  MR. SULLIVAN: Okay.

15                  INVESTIGATOR PERU: Not the name  
16                  of an establishment or who the call came from.

17                  MR. SULLIVAN: Okay. I don't know  
18                  if this is a fair question, so I apologize if  
19                  it's not, but in your experience, while it  
20                  seems to be is over 14 months 22 calls, do you  
21                  have any frame of reference of how that stacks  
22                  up against other establishments in terms of

1 calls, number of calls?

2 INVESTIGATOR PERU: If you are  
3 asking if I think they are excessive, I would  
4 say no. But I don't know the type of calls  
5 that they are as well, so it's hard for me to  
6 make a fair determination not knowing the type  
7 of calls that they are.

8 MR. SULLIVAN: Okay. And then  
9 just in your seven days that you spent  
10 observing the restaurant, obviously, you spent  
11 some time out of there as well. Did you note  
12 if there was a considerable amount of activity  
13 outside of the restaurant, meaning people  
14 walking around?

15 INVESTIGATOR PERU: No, nothing  
16 out of the ordinary, no. Just usual traffic,  
17 foot traffic, pedestrians, people who were,  
18 you know, walking their dogs, residential  
19 traffic. During lunch hour, of course, you  
20 have the crowd from Capitol Hill coming down  
21 and eating, but nothing out of the ordinary.

22 MR. SULLIVAN: Okay. Thank you.

1 CHAIRPERSON MILLER: Okay.

2 MR. FLAHAVEN: Yes. Thank you,  
3 Mr. Peru. Just a few questions for you.  
4 Going to page 3 of your report, you have a  
5 list of establishments where -- that are close  
6 by that have an entertainment endorsement.  
7 You indicate where they have entertainment  
8 endorsement or a settlement agreement.

9 INVESTIGATOR PERU: Correct.

10 MR. FLAHAVEN: You note that --  
11 the Capitol Hill Club, you note as no for, it  
12 looks like, both an entertainment endorsement  
13 and settlement agreement. Is that correct?

14 INVESTIGATOR PERU: According to  
15 the records, that -- in our database, that's  
16 what I was able to determine.

17 MR. FLAHAVEN: All right. If I  
18 could ask, Madam Chair, we actually have a  
19 settlement agreement with Capitol Club. We  
20 have a Board Order that was issued 11/13/13.  
21 Can we submit that? We didn't know that this  
22 was going to be in the report, this being

1 incorrect.

2 CHAIRPERSON MILLER: You want to  
3 submit that as an exhibit? I think that if  
4 it's a settlement agreement, we can take  
5 administrative notice or judicial notice of it  
6 anyway, it's in our records, but --

7 MR. FLAHAVEN: But we do have a  
8 settlement agreement.

9 CHAIRPERSON MILLER: -- be sure to  
10 give us a copy and show the applicant a copy.

11 MR. FLAHAVEN: Yeah, sure.  
12 Actually, I'll just give them --

13 CHAIRPERSON MILLER: Okay.

14 MR. FLAHAVEN: -- a copy.

15 CHAIRPERSON MILLER: But you would  
16 have to give -- I mean, I need a copy to know  
17 what we are referring to. Oh, you don't have  
18 it?

19 MR. FLAHAVEN: We will give you  
20 our copy.

21 CHAIRPERSON MILLER: Okay.

22 MR. FLAHAVEN: Do you want -- here

1 we'll give --

2 CHAIRPERSON MILLER: I mean, I'm  
3 saying we're taking judicial notice of it, if  
4 it's a settlement agreement, but I don't know  
5 specifically exactly what it is.

6 MR. FLAHAVEN: And we also have  
7 copies of the orders, I believe, with  
8 settlements.

9 CHAIRPERSON MILLER: All the  
10 orders are in our records as well.

11 MR. FLAHAVEN: Right.

12 CHAIRPERSON MILLER: Or at least  
13 if I had the exact name. Well, we will take--

14 MEMBER ALBERTI: Ms. Walker will  
15 take them from you.

16 CHAIRPERSON MILLER: You are  
17 referring to a settlement agreement that was  
18 filed with ABRA and approved by the ABC Board.

19 MR. FLAHAVEN: Correct.

20 CHAIRPERSON MILLER: Okay.

21 MR. FLAHAVEN: And it's in the  
22 order.

1 CHAIRPERSON MILLER: Thank you.

2 Okay. It's related.

3 MR. FLAHAVEN: Continuing down the  
4 list, to No. 6, Kenneth Nash Post 8 American  
5 Legion. You indicate that according to the  
6 records you reviewed, that there is no  
7 entertainment endorsement and no settlement  
8 agreement of that establishment.

9 INVESTIGATOR PERU: Which place  
10 are you referring to, sir?

11 MR. FLAHAVEN: No. 6, Kenneth Nash  
12 Post 8 American Legion.

13 INVESTIGATOR PERU: Yes.

14 MR. FLAHAVEN: Again, Madam Chair,  
15 I want to refer that we do have a settlement  
16 agreement with Kenneth Nash Post 8 American  
17 Legion. The Board Order was 11/13/13 and that  
18 is in the information we provided you.

19 CHAIRPERSON MILLER: So what you  
20 handed up here are all the orders you're going  
21 to be referring to? Is that right? And  
22 settlement agreements? And have you provided

1       that to the applicant, too, or no?

2                   MR. FLAHAVEN:   We just did.

3                   CHAIRPERSON MILLER:   You did.

4       Good.   All right.

5                   MR. FLAHAVEN:   No. 8, Sonoma  
6       Restaurant and Wine Bar.   You had indicated  
7       there is an entertainment endorsement there,  
8       but there is no settlement agreement.   Is that  
9       correct based on your research?

10                  INVESTIGATOR PERU:   Yes.

11                  MR. FLAHAVEN:   Is that correct?

12                  INVESTIGATOR PERU:   Oh, yes.   I'm  
13       sorry, yes.

14                  MR. FLAHAVEN:   That's all right.

15                  INVESTIGATOR PERU:   Yeah,  
16       according to what I saw in the system, yes.

17                  MR. FLAHAVEN:   Again, Madam Chair,  
18       we do have a settlement agreement with Sonoma  
19       Restaurant and Wine Bar.   It was approved as  
20       part of Board Order on 7/31/13 and that is in  
21       your materials.   And that has -- I just also  
22       want to point out that there is an

1 entertainment endorsement at Sonoma. There  
2 was a question brought up about that.

3 CHAIRPERSON MILLER: Okay. Just  
4 as far as our procedure is going, I mean, in  
5 general, this is the time to ask him questions  
6 and then in your case, you can make your  
7 statements --

8 MR. FLAHAVEN: Well --

9 CHAIRPERSON MILLER: -- and stuff.  
10 But I understand this is kind of like you are  
11 asking him and then I don't mind doing it this  
12 way, but just in general.

13 MR. FLAHAVEN: Right.

14 CHAIRPERSON MILLER: Okay.

15 MR. FLAHAVEN: Yes, and I  
16 appreciate that. The hard part was I just  
17 didn't have the report.

18 CHAIRPERSON MILLER: Yes.

19 MR. FLAHAVEN: I didn't see the  
20 incorrect information in the report until --

21 CHAIRPERSON MILLER: Okay.

22 MR. FLAHAVEN: -- after we could



1 file.

2 CHAIRPERSON MILLER: Okay.

3 MR. FLAHAVEN: Appreciate that.

4 Getting to -- on Page 4, just in talking about  
5 the location of Tortilla Coast, you said that  
6 it is located primarily in a Residential  
7 District. Is that correct?

8 INVESTIGATOR PERU: Page 4, what  
9 section are you referring to?

10 MR. FLAHAVEN: In Section 3. You  
11 indicate it's primarily a Residential  
12 District.

13 INVESTIGATOR PERU: Correct, yes.

14 MR. FLAHAVEN: All right. Can you  
15 describe what you observed a little bit more  
16 fully? We talked a little bit about it in  
17 terms of that, but are there rowhouses near  
18 the location?

19 INVESTIGATOR PERU: Correct, yes,  
20 next to and behind, yes.

21 MR. FLAHAVEN: Okay. On the -- on  
22 Page 5, the days and hours of visits to the

1 premises, you noted if I heard if correctly in  
2 your testimony, I just want to verify this,  
3 that when you observed the establishment that  
4 you do not currently have an entertainment  
5 endorsement.

6 INVESTIGATOR PERU: Correct, yes.

7 MR. FLAHAVEN: All right. So you  
8 didn't see any live entertainment or observe  
9 noise from live entertainment while you were  
10 at the establishment?

11 INVESTIGATOR PERU: Correct. I  
12 did not, yes.

13 MR. FLAHAVEN: And were you able  
14 to observe -- I noted the times in your report  
15 where you observed the establishment and noted  
16 that it seems that between 10:00 and 11:00 on  
17 Thursday and Friday, which is part of the  
18 entertainment endorsement, because it doesn't  
19 look like you were there and observed activity  
20 there. Is that correct?

21 INVESTIGATOR PERU: Which times  
22 and dates are you looking at exactly?

1                   MR. FLAHAVEN:   So if you are  
2   looking at both, there are Thursday, March  
3   13th.

4                   INVESTIGATOR PERU:   Okay.

5                   MR. FLAHAVEN:   Friday, March 14th,  
6   Thursday, March 20th, Friday, March 21st.  It  
7   appears that you did not observe the location  
8   or were not at the location between 10:00 and  
9   11:00 p.m.

10                  INVESTIGATOR PERU:   Correct.  Yes,  
11   on those days, correct, yes.  Yes.

12                  MR. FLAHAVEN:   Right.  And it also  
13   appears there is an -- there might be a  
14   mistake in there.  It says "On Friday, March  
15   14th, 11:45 to 12:05 a.m.," I assume that's  
16   12:05 p.m. just for clarity.

17                  INVESTIGATOR PERU:   Yes, it would  
18   be.  Yes, that's a typo, yes.

19                  MR. FLAHAVEN:   So that would have  
20   been late morning, early afternoon, then?

21                  INVESTIGATOR PERU:   Correct.  
22   Around lunchtime, yes.

1                   MR. FLAHAVEN:   Okay.   You  
2   mentioned our -- which I think is our exhibit  
3   no. -- the calls for service records, I think  
4   it's our Exhibit No. 2.   You mentioned that I  
5   -- you received a copy of that from me,  
6   correct?

7                   INVESTIGATOR PERU:   Correct, yes.

8                   MR. FLAHAVEN:   And you mentioned--

9                   INVESTIGATOR PERU:   Via email.

10                  MR. FLAHAVEN:   What?

11                  INVESTIGATOR PERU:   I said via  
12   email.

13                  MR. FLAHAVEN:   Oh, via email, yes.

14                  INVESTIGATOR PERU:   Yes.

15                  MR. FLAHAVEN:   And in there you  
16   said you weren't sure of what the various  
17   codes meant?

18                  INVESTIGATOR PERU:   Correct.

19                  MR. FLAHAVEN:   Okay.   And what  
20   time on -- let me actually go to the -- pardon  
21   me one moment.   On the -- you did, as part of  
22   your report on Page 6, including the

1     investigative history, the ABRA investigative  
2     history, correct?

3                   INVESTIGATOR PERU:   Yes.

4                   MR. FLAHAVEN:   And you do note  
5     that on -- there are two relatively recent  
6     violations, February 21, 2012 for no ABC  
7     manager on duty, correct?

8                   INVESTIGATOR PERU:   No.   The only  
9     information that I have is what you see in the  
10    report.

11                  MR. FLAHAVEN:   Right.   So you are  
12    confirming that.   And there also was a sale to  
13    minor on July 30, 2013?

14                  INVESTIGATOR PERU:   Yes, according  
15    to this, yes.

16                  MR. FLAHAVEN:   Right.   And I was  
17    just confirming that there was -- on February  
18    21, 2012 there was a no ABC manager on duty  
19    citation.

20                  INVESTIGATOR PERU:   According to  
21    the history, correct.

22                  MR. FLAHAVEN:   Okay.   Another

1 question for on -- what -- on Exhibit 3 and 4,  
2 do you know what date you took those pictures?

3 INVESTIGATOR PERU: Exhibits 3 and  
4 4. Would you, please, show me the photos?

5 MR. FLAHAVEN: Oh, sure.

6 INVESTIGATOR PERU: I don't have  
7 the photos. I can't recall the exact date and  
8 time.

9 MR. FLAHAVEN: But you did  
10 indicate in your testimony that it was in  
11 colder weather time?

12 INVESTIGATOR PERU: Well, it  
13 wasn't as nice as it is today. So it was  
14 still in the 40s and 50s when I took the  
15 photos.

16 MR. FLAHAVEN: If it's okay, can I  
17 show the witness Exhibit 6? Protestant's  
18 Exhibit 6, which is a photo.

19 CHAIRPERSON MILLER: Yeah, if it's  
20 related to his testimony that you are crossing  
21 him on.

22 MR. FLAHAVEN: Yes.

1 CHAIRPERSON MILLER: Okay.

2 MR. FLAHAVEN: Um-hum. Do you  
3 have a copy of it?

4 INVESTIGATOR PERU: I believe the  
5 photos were taken during lunchtime though in  
6 the daytime, so that I can confirm. It was  
7 definitely in the daytime during lunch hour.

8 MR. FLAHAVEN: Okay.

9 MEMBER ALBERTI: Madam Chair, has  
10 the licensee seen that exhibit?

11 MR. FLAHAVEN: Yes.

12 MEMBER ALBERTI: Okay. Pardon me.

13 MR. FLAHAVEN: I'm sorry, I'm not  
14 Madam Chair. Sorry.

15 MEMBER ALBERTI: I was talking to  
16 our Chair.

17 MR. FLAHAVEN: Yes.

18 MEMBER ALBERTI: She is running  
19 the meeting. I have to ask through her.

20 MR. FLAHAVEN: Yes, yes. And in  
21 fact, we have extra copies if we want to give,  
22 we'll give to the applicant as well.

1 CHAIRPERSON MILLER: Okay.

2 MR. FLAHAVEN: But we have already  
3 served all those or we can give them up to  
4 actually the Board. If you want to hand them  
5 over. I just want to say the establishment  
6 that is pictured, is that Tortilla Coast?

7 INVESTIGATOR PERU: Yes, sir, it  
8 is.

9 CHAIRPERSON MILLER: I'm sorry,  
10 what did you say?

11 MR. FLAHAVEN: Do you notice --

12 CHAIRPERSON MILLER: I'm sorry, we  
13 missed your question.

14 MR. FLAHAVEN: No, I just said is  
15 the establishment in the photo we provided in  
16 Exhibit 6 Tortilla Coast.

17 CHAIRPERSON MILLER: Okay.

18 MR. FLAHAVEN: Yes. And the  
19 answer was affirmative. Is -- do you know the  
20 windows that surround the property, are those  
21 the windows you discussed in your testimony,  
22 sir?



1 INVESTIGATOR PERU: Yes, yes.

2 MR. FLAHAVEN: Do you notice that  
3 the windows are open in the picture?

4 INVESTIGATOR PERU: When I look  
5 closely, I can see it seems like they are  
6 slided to the left.

7 MR. FLAHAVEN: Yes.

8 INVESTIGATOR PERU: Yeah, there is  
9 a couple of -- maybe, yeah.

10 MR. FLAHAVEN: This looks like  
11 fall. Would those -- are those reminiscent of  
12 the windows you saw that were full length?

13 INVESTIGATOR PERU: It's the same  
14 windows, correct, correct.

15 MR. FLAHAVEN: And do you notice  
16 on the photo as well that the door seems --  
17 the door is propped open to the establishment?

18 INVESTIGATOR PERU: Yeah. I don't  
19 know if it is propped open, but it appears to  
20 be open.

21 MR. FLAHAVEN: Okay.

22 INVESTIGATOR PERU: I would guess.

1                   MR. FLAHAVEN: And it seems like  
2 the weather is a little bit warmer that day?

3                   INVESTIGATOR PERU: It's hard to  
4 determine. I mean, I can't tell that by the  
5 photo.

6                   MR. FLAHAVEN: Okay. And just a  
7 couple more questions. When you talked -- you  
8 had mentioned that you had talked to Ms.  
9 Rachel Dick about -- in anticipation of filing  
10 your report, who represented the applicant,  
11 correct?

12                  INVESTIGATOR PERU: Yes.

13                  MR. FLAHAVEN: And did she -- can  
14 you describe what she said the type of live  
15 entertainment that would be provided, that  
16 they were planning on having at the  
17 establishment?

18                  INVESTIGATOR PERU: I believe my  
19 report states karaoke and during Cinco de Mayo  
20 having a band, I believe. I think she said  
21 Mariachi band for Cinco de Mayo. But she also  
22 stated there would be no DJs.

1                   MR. FLAHAVEN:   Correct.   Do you  
2   know, based on your experience as an  
3   Investigator, if they would -- if the  
4   entertainment endorsement was granted, would  
5   the establishment be able to have a Mariachi  
6   band beyond May 5th and other days of the  
7   year?

8                   INVESTIGATOR PERU:   Yes, they can  
9   have live entertainment during their operating  
10   hours if they apply for it, if they are  
11   approved.

12                  MR. FLAHAVEN:   And in what  
13   instances would they have to get an amendment  
14   to their entertainment endorsement?   Would  
15   that be in the case of a DJ or a cover charge?

16                  INVESTIGATOR PERU:   A DJ is  
17   considered live entertainment.   A cover  
18   charge, correct.   They would have to add an  
19   endorsement.

20                  MR. FLAHAVEN:   So a Dj you would  
21   not have to -- you wouldn't have to amend the  
22   endorsement?

1                   INVESTIGATOR PERU: A DJ is  
2                   considered live entertainment, correct.

3                   MR. FLAHAVEN: Okay. So they  
4                   could, based on your experience, if they so  
5                   choose to, without having to go back to the  
6                   Board. increase the activity that they could  
7                   have the live entertainment activity they  
8                   could have?

9                   INVESTIGATOR PERU: Correct.

10                  MR. FLAHAVEN: Okay. No further  
11                  questions.

12                  CHAIRPERSON MILLER: Okay. Mr.  
13                  Short, do you have a questions?

14                  MEMBER SHORT: Yes. Investigator  
15                  Peru, looking at Exhibit No. 6, the picture of  
16                  the establishment, I'm looking at the picture.  
17                  I can see the leaves, the foliage on the trees  
18                  is totally green, so this would not be in the  
19                  fall or the winter months. Is that correct?  
20                  With the windows open.

21                  MR. FLAHAVEN: He didn't testify  
22                  to that.

1                   MEMBER SHORT: No, but he  
2 testified about the pictures. He didn't  
3 testify -- we gave him a copy of and he  
4 testified about the pictures.

5                   MR. FLAHAVEN: Okay.

6                   MEMBER SHORT: So I'm just asking  
7 you to look at the picture again.

8                   INVESTIGATOR PERU: Yes, sir. It  
9 appears in the picture it would have to be  
10 warm. Everything is green on the ground and  
11 there are leaves on the tree, correct.

12                  MEMBER SHORT: And people are  
13 dressed like it's -- with the window open on  
14 the club.

15                  INVESTIGATOR PERU: Correct. Yes,  
16 sir.

17                  MEMBER SHORT: Thank you. That's  
18 all I have.

19                  CHAIRPERSON MILLER: Okay.  
20 Anybody else? Do you have a question based on  
21 Board questions?

22                  MR. SULLIVAN: Yes.

1 CHAIRPERSON MILLER: Okay.

2 RECROSS-EXAMINATION

3 MR. SULLIVAN: In the same  
4 exhibit, Mr. Peru, can you tell if there is an  
5 individual who is actually opening our front  
6 door and perhaps that's why it is open?

7 INVESTIGATOR PERU: It's --

8 MR. SULLIVAN: Hard to tell?

9 INVESTIGATOR PERU: -- impossible  
10 to determine, yeah.

11 MR. SULLIVAN: Okay.

12 INVESTIGATOR PERU: Absolutely.

13 MR. SULLIVAN: Thank you.

14 CHAIRPERSON MILLER: Okay. Any  
15 questions based on that one question?

16 MR. FLAHAVEN: No.

17 CHAIRPERSON MILLER: All right.  
18 Thank you, Mr. Peru.

19 CHAIRPERSON MILLER: Oh, did you  
20 have something?

21 MEMBER SILVERSTEIN: Madam Chair,  
22 the ANC has used up 15 minutes of its 90.

1 CHAIRPERSON MILLER: Thank you  
2 very much.

3 (Whereupon, witness was excused.)

4 MEMBER SILVERSTEIN: Tortilla  
5 Coast has used up 3 minutes of their 90.

6 CHAIRPERSON MILLER: Okay. Good.  
7 Great. So now we turn to the applicant's case  
8 and that's you, right? So I have to swear you  
9 in. You're going to testify, right?

10 MR. SULLIVAN: Right.

11 CHAIRPERSON MILLER: Okay.

12 Whereupon,

13 BRIAN SULLIVAN  
14 was called as a witness by Counsel for the  
15 licensee, and having been first duly sworn,  
16 assumed the witness stand and was examined and  
17 testified as follows:

18 CHAIRPERSON MILLER: Okay. And  
19 since it's just you, I think our practice has  
20 been we don't always make you go up to the  
21 witness stand, if you are comfortable  
22 testifying there, that's okay.

1 MR. SULLIVAN: Sure.

2 CHAIRPERSON MILLER: All right.

3 So do you want to --

4 MR. SULLIVAN: Cross-examine  
5 myself?

6 CHAIRPERSON MILLER: No. Testify.  
7 Say anything, you know, any testimony about --  
8 on behalf of your case.

9 MR. SULLIVAN: Okay. Sure.

10 CHAIRPERSON MILLER: Okay.

11 MR. SULLIVAN: Yes, I would.

12 CHAIRPERSON MILLER: All right.

13 MR. SULLIVAN: So I think it is  
14 clear that we have windows throughout the  
15 organization. At times the windows will be  
16 open.

17 To answer one of your earlier  
18 questions, we have been around for 25 years.  
19 We have no prior history of noise violations.  
20 I -- one of the areas that I feel as though  
21 maybe has not been addressed is the fact that  
22 there are code sections in place in the



1 District relative to noise.

2 So I recognize the concerns, but  
3 we are already obligated to follow those, to  
4 adhere to those noise ordinances, so just  
5 because we have windows that can open and just  
6 because we are applying for music, in my mind,  
7 does not equate to the fact that now we are  
8 going to have music blaring out because we can  
9 immediately have ABRA or DCRA or someone show  
10 up and say that you are in direct conflict  
11 with this code and, therefore, we would be  
12 subject to a fine. And if we keep doing it,  
13 then I would imagine we would be subject to  
14 being shut down.

15 And so while I sympathize with the  
16 concern, this falls under my concerns with the  
17 settlement agreement. I would suggest that  
18 it's not that we have refused to negotiate.  
19 I have actually spoken to the protestant a  
20 number of times, both on the phone and in  
21 person for mediation and I say this with all  
22 due respect, the negotiation, to me, has kind

1 of been take it or leave it.

2 This is our settlement agreement  
3 and either you sign it or you don't. And so  
4 I don't think that really lends itself to  
5 negotiations. My stance has always been, as  
6 I stated earlier, that it only benefits us to  
7 have a good relationship with not only the  
8 neighborhood, but with the ANC as well.

9 And when I have asked what the  
10 necessity of the settlement agreement was, the  
11 answer -- the two answers that I got and  
12 perhaps there is more, but the two that I  
13 received are that it provides an opening for  
14 dialogue between the ANC and the restaurant  
15 and then the second one, I believe, was that  
16 if we leave, they want to have assurance that  
17 the new owner will follow the rules as well.

18 And so in response to that, I  
19 would say in terms of an open dialogue, I have  
20 always found the best way to do it is to  
21 actually talk and not to have to have a  
22 document that is -- and I will own that

1 language duplicative in its entirety to all of  
2 the obligations that we have with the Health  
3 Department, DCRA or ABRA.

4 I would note that in the 14 months  
5 when these calls were placed and I would argue  
6 that many of them were made from my staff and  
7 my organization because, as you can imagine at  
8 a restaurant on the Hill, the Hill staffers  
9 there are occasion where people walk into our  
10 establishment and they have already been over-  
11 served and so it's our obligation to not serve  
12 them.

13 And quite often that turns into a  
14 belligerent situation where we do,  
15 unfortunately, have to call the police and  
16 there are times, in fact, when you have to  
17 make multiple phone calls to the police over  
18 the same incident.

19 And so I think while it is a fair  
20 exhibit to show, I think the fact that there  
21 is no context behind it, in terms of who made  
22 those phone calls or what the situation was,

1 and the fact that the -- Mr. Peru suggested  
2 that 22 calls over 14 months is not excessive.  
3 It doesn't really show any consistent behavior  
4 where there is issues with our organization.

5 But I would also suggest that over  
6 all those calls, no one in my organization at  
7 the restaurant nor myself has ever received a  
8 phone call from the ANC in terms of let's  
9 address these issues. There seems to be  
10 excessive calls. Can we sit down and meet to  
11 understand it?

12 And so the concern that I have is  
13 so we have never received a phone call about  
14 that. So what exactly will a settlement  
15 agreement do? If the end goal is to make sure  
16 that the restaurant is servicing the  
17 neighborhood and is not causing issues or  
18 excessive noise, if that's the end goal of the  
19 settlement agreement, my hope would be that  
20 regardless of whether or not you have one, the  
21 ANC representing their constituents, we would  
22 still be following up with organizations such

1 as Tortilla that don't have a settlement  
2 agreement and say let's talk. I have heard  
3 from a number of people in my District. And  
4 yet, we have never received a phone call.

5 And so it seems to me as though a  
6 large extent of the basis for the ANC's  
7 protest is because we don't have a settlement  
8 agreement.

9 CHAIRPERSON MILLER: Okay.

10 MR. SULLIVAN: The fact that they  
11 have exhibited so many other people that do --  
12 I'm sorry?

13 CHAIRPERSON MILLER: No, I'm just  
14 trying to draw a fine line, because I said  
15 before we don't want to hear too much about  
16 your settlement agreement.

17 MR. SULLIVAN: Sure. That's fine.  
18 I can stop talking about it.

19 CHAIRPERSON MILLER: Okay. I  
20 mean, to some extent it might be relevant, so  
21 I just want to let you all know, because I  
22 said that to you, that --

1 MR. SULLIVAN: Okay.

2 CHAIRPERSON MILLER: -- I'm trying  
3 to listen to see whether, you know --

4 MR. SULLIVAN: Right. Well, then  
5 the bigger point that I would take out of this  
6 is the fact that we have not received phone  
7 calls about noise complaints.

8 CHAIRPERSON MILLER: Right.

9 MR. SULLIVAN: We have not had  
10 neighbors come in and tell us there is noise  
11 issues. I have never received a call from  
12 anyone in the ANC saying we need to sit down,  
13 people that live near you, near your  
14 establishment are concerned because there is  
15 so much noise coming out.

16 And so between that history, again  
17 25 years, and the fact that if we are  
18 fortunate enough to have an entertainment  
19 license, we already have noise ordinance codes  
20 that preclude us from the behavior that the  
21 ANC understandably is concerned about, which  
22 is excessive noise.

1                   And so to get to the heart of the  
2                   matter, what seems to be the biggest issue for  
3                   the protest is the concern with peace and  
4                   noise. And I would say that our history shows  
5                   we don't have an issue with that and the fact  
6                   that we are beholden already to laws regarding  
7                   DCRA Joint Task Force, so I'm not really sure  
8                   where the issue applies.

9                   CHAIRPERSON MILLER: Okay. Are  
10                  you ready for cross? To be crossed?

11                 MR. SULLIVAN: Yes.

12                 CHAIRPERSON MILLER: Are you  
13                  finished? Okay. Mr. Flahaven?

14                 CROSS-EXAMINATION

15                 MR. FLAHAVEN: Mr. Sullivan, there  
16                  was -- when Mr. Peru was testifying, he said  
17                  he wasn't sure if all of the windows along the  
18                  facade of your building could open. Can you  
19                  just provide that information? Can all those  
20                  full-length windows open up on both sides of  
21                  the establishment?

22                 MR. SULLIVAN: To open? To be

1 completely honest, they are all designed to.  
2 However, at this point, there are a few that  
3 do not just because of conditions.

4 MR. FLAHAVEN: You mentioned some  
5 confusion, or at least when you were  
6 questioning Mr. Peru, about the calls for  
7 service report and Anton's Restaurant. Is  
8 there an Anton's Restaurant located at the  
9 same location as Tortilla Coast?

10 MR. SULLIVAN: I don't know the  
11 legal entity names of some of the  
12 establishments. So for example, we are -- our  
13 LLC is a different name than Tortilla Coast,  
14 so I don't know. I can't answer that.

15 MR. FLAHAVEN: Are you located at  
16 400 1st Street, S.E.?

17 MR. SULLIVAN: Yes, we are.

18 MR. FLAHAVEN: Are all the calls  
19 that are listed on the calls for service, are  
20 they emanating from 400 -- or at least listed  
21 as coming -- related to 400 1st Street, S.E.?

22 MR. SULLIVAN: It would appear



1       that way, yes.

2                   MR. FLAHAVEN:  Do you know if  
3       there was an Anton's Restaurant that ever  
4       existed at that property?

5                   MR. SULLIVAN:  I don't know.  I  
6       can't answer one way or the other.

7                   MR. FLAHAVEN:  On the -- well, let  
8       me ask you about your argument that we had not  
9       reached out to you either via -- at any time  
10      via phone or email.  Have we not reached out  
11      to you as part of this process?

12                  MR. SULLIVAN:  You have.  Just  
13      when I made that statement, if I didn't  
14      clarify, what I said was you haven't reached  
15      out to me relative to concerns about noise-  
16      specific incidents.  You have reached out to  
17      me about this entertainment license request.

18                  MR. FLAHAVEN:  Did -- when we --  
19      when there was a mediation session, did the  
20      parties talk about noise as a concern?

21                  MR. SULLIVAN:  In my recollection,  
22      you raised it as a potential concern in terms

1 of what could happen if there was an  
2 entertainment license.

3 MR. FLAHAVEN: And just for the  
4 record, you -- were you at the mediation  
5 session?

6 MR. SULLIVAN: Yes, I was.

7 MR. FLAHAVEN: Okay. Do -- now,  
8 you received copies of all of our exhibits and  
9 our submission materials on April 2nd,  
10 correct?

11 MR. SULLIVAN: I received the  
12 material, yes.

13 MR. FLAHAVEN: So you saw the  
14 calls for service report when we sent it to  
15 you and copied you seven days in advance,  
16 correct?

17 MR. SULLIVAN: Yes.

18 MR. FLAHAVEN: Can you provide  
19 some information? I'm sure you have had some  
20 time to look into the specific incidents that  
21 are in the calls for service report. Do you  
22 have any detailed information about any of

1       those calls for service?

2                   MR. SULLIVAN:   I do not.

3                   MR. FLAHAVEN:   Is there any reason  
4       why you didn't ask your staff or ask or  
5       contact MPD to figure out where those -- get  
6       more information about those calls for  
7       service?

8                   MR. SULLIVAN:   I did speak to my  
9       staff, but to be fair to them, I asked and I  
10      don't think that they were prepared to  
11      recollect exactly the dates of when they may  
12      have made those phone calls.

13                   We have incident reports that we  
14      fill out internally when there are significant  
15      incidents, but they do not all qualify, for  
16      example, when the police are called because of  
17      somebody who is standing outside of our  
18      restaurant that is bothering our guests, that  
19      doesn't qualify as an incident report.

20                   MR. FLAHAVEN:   Now, you mentioned  
21      that you -- do you keep records of all your  
22      calls for service at the establishment?

1 MR. SULLIVAN: No, we do not.

2 MR. FLAHAVEN: Okay. Do you keep  
3 any records of any offenses or anything that  
4 has happened at the establishment? Any  
5 records at all?

6 MR. SULLIVAN: Do we keep any  
7 records at all at our establishment?

8 MR. FLAHAVEN: No. Records  
9 related to you, offenses or serious offenses?

10 MR. SULLIVAN: We have a  
11 requirement of our managers that they fill out  
12 an incident report and there is conditions and  
13 stipulations as to when that qualifies, so  
14 yes, we do.

15 MR. FLAHAVEN: Did you reconcile  
16 that information with the calls for service  
17 report in anticipation of this hearing?

18 MR. SULLIVAN: No, I did not.

19 CHAIRPERSON MILLER: While you are  
20 pausing, I just want --

21 MR. FLAHAVEN: Yes.

22 CHAIRPERSON MILLER: -- to say

1       that Mr. Jones has joined us on the Board.

2                   MEMBER JONES:   Thank you, Madam  
3       Chair.

4                   CHAIRPERSON MILLER:   Welcome, Mr.  
5       Jones.   Okay.

6                   MR. FLAHAVEN:   Do you have, Mr.  
7       Sullivan, any records of -- obviously, this  
8       was of the past year, but of previous time  
9       periods, the calls for service, from your --  
10      from 400 1st Street, S.E.?

11                  MR. SULLIVAN:   I'm sorry, could  
12      you --

13                  MR. FLAHAVEN:   Do you have any  
14      records from before 2013 which is roughly the  
15      time period that Exhibit 2 covers for -- that  
16      we submitted of other calls for service to  
17      your establishment?

18                  MR. SULLIVAN:   Meaning do I have a  
19      list like this?

20                  MR. FLAHAVEN:   Yes.

21                  MR. SULLIVAN:   Previous to 2013?

22                  MR. FLAHAVEN:   Yep.

1 MR. SULLIVAN: I do not.

2 MR. FLAHAVEN: Do you view the  
3 calls for service from your establishment as  
4 problematic?

5 MR. SULLIVAN: For whom?

6 MR. FLAHAVEN: For you. Are you  
7 concerned about the calls for service that are  
8 coming from your establishment?

9 MR. SULLIVAN: Well, I think it is  
10 a bit -- it is inappropriate for me to comment  
11 when I don't know the nature of it. Any time  
12 that we have to involve the police, it's a  
13 concern, but I'm also acutely aware of the  
14 situations that many restaurants face, which  
15 is you can't control who walks in your front  
16 door and so the fact that there are people  
17 that walk in our front door that are  
18 belligerent, that are intoxicated, there are  
19 people that stand outside of our restaurant  
20 that we have not served that we have nothing  
21 to do with that are potentially acting  
22 inappropriately, that's a concern relative to

1 the safety of my guests, of my employees and  
2 of the neighborhood.

3 So, yes. And as I said, we have  
4 incident reports for our managers to note  
5 that. And the reason why I can't necessarily  
6 recall it right now is because we deal with it  
7 in the moment and address it, so I have nine  
8 restaurants. I can't necessarily recall an  
9 incident report that was generated 14 months  
10 ago.

11 MR. FLAHAVEN: And just looking at  
12 the calls for service, you will note there is  
13 about -- you will note in October of 2013, it  
14 seems there is a, relatively speaking on this  
15 list, spike in the calls for service. Do you  
16 have any information about those calls for  
17 service?

18 MR. SULLIVAN: Not at this moment.

19 MR. FLAHAVEN: You mentioned that,  
20 obviously, these calls for service are a  
21 concern, do you have any plans to address such  
22 instances in the future or have you talked to

1     your managers about them?

2                   MR. SULLIVAN: Well, as I just  
3     explained and, unfortunately, I can't quantify  
4     it, there are a certain number of instances  
5     that we have no control over. The best thing  
6     that we can do is handle them professionally  
7     and appropriately, as I said for the safety of  
8     our guests and our employees.

9                   We follow, our managers are  
10    instructed to, they have all taken training,  
11    to ensure that they are not over-servicing  
12    anybody. And so the best that I can do is  
13    continue to emphasize with the managers the  
14    way that they should interact with our guests,  
15    that they should be sure that they follow all  
16    regulations and not over-serve anyone.

17                  I think there also has to be a  
18    recognition of where we are relative to Hill  
19    staffers and there is a number of  
20    establishments around us and we can't control  
21    what everybody else does.

22                  MR. FLAHAVEN: Is the -- would it



1 be correct to say that the -- it sounds like  
2 your plan is just to continue when these  
3 instances happen to you, call the police.

4 MR. SULLIVAN: When it is  
5 warranted. I'm not going to ever ask my  
6 managers to put themselves in harm's way. So  
7 as an example, if we are ever being robbed, we  
8 have specific instructions that you are not to  
9 try to take on anyone who is robbing you.

10 If you have someone who is  
11 inebriated and if they want to get into a  
12 physical altercation, you are never to involve  
13 yourself in that. You are to leave and call  
14 the police.

15 So my -- the primary concern I  
16 have is for the safety of my employees and for  
17 the patrons in my restaurant. So if that  
18 translates to calls to the police, who are  
19 professionally trained to handle the  
20 situations, then I will always encourage my  
21 managers to call the police.

22 MR. FLAHAVEN: Based on the

1 information that is provided in the calls for  
2 service, do you think you will have a  
3 conversation with your managers about that  
4 moving forward?

5 MR. SULLIVAN: Considering that I  
6 have that conversation on a regular basis with  
7 them, yes, I imagine I will continue to do so.

8 MR. FLAHAVEN: The final question  
9 I have for the applicant is you mentioned  
10 earlier a mediation session that if we had any  
11 concerns --

12 CHAIRPERSON MILLER: Wait, wait.  
13 Okay. This is what I'm trying to avoid,  
14 hearing what you all said during mediation to  
15 each other. That's --

16 MR. FLAHAVEN: Well, I'm trying to  
17 compare it to what he just brought up. There  
18 is a point he just brought up.

19 MEMBER ALBERTI: No.

20 CHAIRPERSON MILLER: I didn't --

21 MR. FLAHAVEN: All right. Do  
22 you --

1 CHAIRPERSON MILLER: All right.

2 You have heard our concerns before.

3 MR. FLAHAVEN: Understand,  
4 understand. Let me -- you mentioned you have  
5 nine establishments in D.C.?

6 MR. SULLIVAN: No.

7 MR. FLAHAVEN: In your previous  
8 testimony. How many establishments do you  
9 have in the District of Columbia?

10 MR. SULLIVAN: Three.

11 MR. FLAHAVEN: How many?

12 MR. SULLIVAN: Three.

13 MR. FLAHAVEN: And you mentioned  
14 that you have multiple -- just in your  
15 response to me before, you mentioned that you  
16 have multiple establishments and it's hard to  
17 keep track of different activities that are  
18 happening in all of them. Is that correct?

19 MR. SULLIVAN: No, that's not what  
20 I said.

21 MR. FLAHAVEN: Can you then  
22 refresh my memory as to what you said?

1                   MR. SULLIVAN: I didn't say it was  
2                   hard to keep track. I said that with nine  
3                   restaurants, I can't necessarily immediately  
4                   call up instances that occurred over a year  
5                   ago.

6                   MR. FLAHAVEN: Does it sound --  
7                   does it seem like there may be -- it may make  
8                   sense to have somebody on-site that would be  
9                   a point of contact for concerns at each  
10                  establishment?

11                  MR. SULLIVAN: Somebody on-site  
12                  for whom? As a point of contact for me?

13                  MR. FLAHAVEN: For the community  
14                  and for ANC.

15                  MR. SULLIVAN: Yes, we have seven  
16                  -- we have six managers on-site at our  
17                  restaurants. I should say, I'm sorry, six  
18                  managers on staff and we always have two  
19                  managers that are at the restaurant at all  
20                  times.

21                  MR. FLAHAVEN: But you directed us  
22                  to contact you if we have concerns directly.

1                   MR. SULLIVAN:  Actually, what I  
2                   said is that if you would like, I would give  
3                   you my cell phone number and you can call me.  
4                   You always have the right to call my  
5                   restaurant and ask for my general manager or  
6                   the manager-on-duty.

7                   MR. FLAHAVEN:  All right.  No  
8                   further questions.

9                   CHAIRPERSON MILLER:  Okay.  Board  
10                  questions?  Mr. Silverstein?

11                  MEMBER SILVERSTEIN:  Mr. Sullivan,  
12                  what is it that you are seeking to do beyond  
13                  the entertainment endorsement?  What is it  
14                  that you hope to do in that regard?

15                  MR. SULLIVAN:  In terms of  
16                  utilizing the entertainment --

17                  MEMBER SILVERSTEIN:  What are your  
18                  plans?

19                  MR. SULLIVAN:  -- license?

20                  MEMBER SILVERSTEIN:  Yes.

21                  MR. SULLIVAN:  In all honesty if I  
22                  may, this arose from the fact that we just

1     celebrated our 25th anniversary last summer  
2     and so as we were planning what we wanted to  
3     do, it was occurring over the course of about  
4     four weeks, we talked about different  
5     activities that we wanted to do and so, for  
6     example, karaoke was one that we thought would  
7     be interesting for guests.

8             We also have a number of areas in  
9     the restaurant that are utilized for private  
10    events, so we have a room, for example, in our  
11    basement which is completely isolated. There  
12    is no windows, but we also use other areas of  
13    our restaurant, you know, for example, that  
14    are not open to the public in the morning, so  
15    we use that for breakfast events.

16            And on occasion, we have received  
17    requests from those people who want to have  
18    those events to be able to have music. And so  
19    right now, obviously, we cannot do that  
20    without an entertainment license. And then,  
21    obviously, as a Tex Mex establishment, Cinco  
22    de Mayo is a big day for us.

1                   And so in talking to my director  
2                   of marketing, we have talked about the various  
3                   ideas of what we might want to promote. And  
4                   so a Mariachi band is kind of a logical choice  
5                   that we might want to have on a day such as  
6                   that.

7                   MEMBER SILVERSTEIN: So would you  
8                   have anything planned for the area that is in  
9                   the -- that is outdoors, but inside the  
10                  windows?

11                 MR. SULLIVAN: Relative to the?

12                 MEMBER SILVERSTEIN:  
13                 Entertainment.

14                 MR. SULLIVAN: So all I can answer  
15                 is that in the past when we have talked about  
16                 how we would do karaoke, for example, we  
17                 talked about having that in the bar. And I'll  
18                 be honest with you, it was less about how can  
19                 we avoid having noise emanate out from our  
20                 restaurant, not because we are not concerned  
21                 about that, but because the bar was the  
22                 logical place in terms of where people would

1       congregate to do something such as karaoke.

2                   MEMBER SILVERSTEIN:   So --

3                   MR. SULLIVAN:   Also, we have never  
4       gone beyond those initial conversations.   And  
5       so we don't have an entertainment license, but  
6       once we start having those conversations and  
7       it becomes more of an opportunity, if we have  
8       an entertainment license, we will then have to  
9       plan for where exactly we would put it and how  
10      we would make sure that noise doesn't emanate  
11      outside the restaurant, etcetera.

12                  MEMBER SILVERSTEIN:   Precisely.  
13      You are in a residential neighborhood.   You  
14      have a small street beside you there, 1st  
15      Street.   Across the street are small homes,  
16      some of which are -- have become lobby shops,  
17      but others, I assume, are still residential.

18                  And the issue that we are looking  
19      at is peace, order and quiet and what would  
20      emanate from your establishment.   Are you  
21      saying that in general, it would not be a  
22      problem to you if you had entertainment inside



1     your establishment, but not in the areas that  
2     are part of the, I don't know whether it's the  
3     sidewalk cafe, summer garden, but the part  
4     inside the temporary windows?

5                 MR. SULLIVAN:   So the question is?  
6     I'm sorry, could you just ask it again?

7                 MEMBER SILVERSTEIN:   Are you --  
8     where -- would you have the entertainment in  
9     areas where if the windows of the cafe were  
10    open, it could be heard outside?

11                MR. SULLIVAN:   In all honesty,  
12    part of our planning process would be such  
13    that if, for example, logistically, we had to  
14    have it in an area where it would be near the  
15    windows, we just wouldn't have the windows  
16    open.   I mean, it's -- aside from the fact  
17    that it's an ordinance, you can't be in a  
18    neighborhood for 25 years and not establish  
19    relationships with people that are around you.

20                And so we are very sensitive to  
21    that.   And even if it's an 80 degree day, we  
22    have air conditioning.   We don't have the

1 windows open because we need the air to come  
2 in. We do it because, obviously, it's a nice  
3 ambiance factor and it catches people as they  
4 are walking down the street.

5 But if we said let's have karaoke  
6 at 7:00 at night, we would close the windows  
7 because we know that we would be disturbing  
8 our neighbors.

9 MEMBER SILVERSTEIN: So you would  
10 have no problem at all with having the windows  
11 closed if you are going to have entertainment?

12 MR. SULLIVAN: Nope.

13 MEMBER SILVERSTEIN: And no  
14 further questions.

15 CHAIRPERSON MILLER: Others?  
16 Okay. I just have a couple. Tortilla Coast,  
17 this one has been in this location for 25  
18 years? This same location?

19 MR. SULLIVAN: (No audible  
20 answer.)

21 CHAIRPERSON MILLER: Okay. And  
22 were there residences nearby during that

1 period?

2 MR. SULLIVAN: So I have only  
3 owned this restaurant for about 3 and a half  
4 years, so I don't think -- I would imagine  
5 such, because there are rowhouses that look  
6 like they have been there for quite a while.

7 CHAIRPERSON MILLER: Oh, okay.  
8 During the period you have been there, it's  
9 not like there has been a new residential  
10 development?

11 MR. SULLIVAN: Correct.

12 CHAIRPERSON MILLER: Okay. And so  
13 but I noticed, I think your hours now Friday  
14 and Saturday you are open until 2:30 a.m.?

15 MR. SULLIVAN: That we're open  
16 until 2:30? No.

17 CHAIRPERSON MILLER: You're not?

18 MR. SULLIVAN: No.

19 CHAIRPERSON MILLER: That's not  
20 correct?

21 MR. SULLIVAN: No.

22 CHAIRPERSON MILLER: Oh, maybe you

1 are allowed to. How late are --

2 MR. SULLIVAN: Right.

3 CHAIRPERSON MILLER: -- you open?

4 Oh.

5 MR. SULLIVAN: Yeah. In all  
6 honesty, the nature of our business is  
7 actually Monday through Friday, it's much  
8 busier because we attract lunch business from  
9 the Hill and happy hour and dinner from the  
10 Hill.

11 CHAIRPERSON MILLER: Okay.

12 MR. SULLIVAN: Saturdays and  
13 Sundays are actually our lowest volume days  
14 and so we are usually closed by 11:00 p.m. on  
15 Saturday and Sunday.

16 CHAIRPERSON MILLER: Okay. So  
17 Sunday through Thursday are people's work  
18 nights, I mean, when they want to go to sleep.

19 MR. SULLIVAN: Right.

20 CHAIRPERSON MILLER: I mean, you  
21 know, so how late are you open those nights?

22 MR. SULLIVAN: Roughly the same

1 hours.

2 CHAIRPERSON MILLER: Midnight?

3 MR. SULLIVAN: So between 10:00  
4 and 11:00.

5 CHAIRPERSON MILLER: Okay. Did  
6 you testify that you have never received a  
7 complaint about noise?

8 MR. SULLIVAN: I don't -- if I  
9 did, I believe that would be a mistake.

10 CHAIRPERSON MILLER: Okay.

11 MR. SULLIVAN: I don't believe we  
12 have never, as much as we have not received  
13 significant complaints relative to noise.

14 CHAIRPERSON MILLER: Okay. You  
15 have not received significant complaints.  
16 Does that mean significant number of  
17 complaints?

18 MR. SULLIVAN: Correct.

19 CHAIRPERSON MILLER: Okay. And  
20 did you ever receive any complaints from the  
21 ANC?

22 MR. SULLIVAN: I have not ever

1       been directly contacted. And I'm only aware  
2       of contact from the ANC relative to the  
3       settlement agreement with our -- with members  
4       of my management team at the restaurant.

5                   CHAIRPERSON MILLER: Okay. Now,  
6       did you say you have three restaurants or nine  
7       restaurants?

8                   MR. SULLIVAN: So I'm sorry. The  
9       -- my company, we have nine restaurants all-  
10      told.

11                  CHAIRPERSON MILLER: Okay.

12                  MR. SULLIVAN: We have three in  
13      the District of Columbia and, in fact, we are  
14      about to open our fourth.

15                  CHAIRPERSON MILLER: Okay. So the  
16      ones in the District of Columbia, the other  
17      ones, do they have an entertainment  
18      endorsement?

19                  MR. SULLIVAN: No.

20                  CHAIRPERSON MILLER: No, okay. So  
21      finally, when I look at this picture, it looks  
22      like a busy intersection.

1                   MR. SULLIVAN: I'm sorry, can I  
2                   amend that?

3                   CHAIRPERSON MILLER: Yes.

4                   MR. SULLIVAN: We have an ABC  
5                   License that we have just cleared the protest  
6                   period for our new restaurant that is set to  
7                   open in May and that actually does have an  
8                   entertainment license.

9                   CHAIRPERSON MILLER: Which one is  
10                  that?

11                  MR. SULLIVAN: It's at 22nd and M  
12                  Street.

13                  CHAIRPERSON MILLER: Okay.

14                  MR. SULLIVAN: And, in fact, we  
15                  worked with ANC-2A on that. We didn't sign a  
16                  settlement agreement and they did not protest  
17                  the application.

18                  CHAIRPERSON MILLER: Okay. 22nd  
19                  and M. All right. So how would you  
20                  characterize this location? Is it commercial?  
21                  I guess it looks like it is probably mixed-use  
22                  or whatever. How busy is it?

1                   MR. SULLIVAN: So I mean, I don't  
2                   -- I'm not an expert, so in terms of  
3                   classifying it, diagonally across from the  
4                   corner that we are on is an enormous parking  
5                   lot for all of the Congressional buildings and  
6                   I think there is an illusion to the fact that  
7                   -- and then there is a Capitol Police presence  
8                   right there, which is where they are going to  
9                   enter with their cars.

10                  And so if you were breaking into  
11                  quarters, you know, the corners into quarters,  
12                  we are on one corner, obviously. Diagonally  
13                  across from us is a parking lot. Across from  
14                  our -- the entrance of our restaurant is a  
15                  residential building. And then on the other  
16                  side are the rowhouses which is a mixture of  
17                  lobbying shops as well as residences.

18                  Directly to our left, so if you  
19                  stayed on the same block, as I believe someone  
20                  alluded to, there is a Subway, there is a  
21                  liquor store, there is Talay Thai and there is  
22                  Bullfeathers. And then right immediately



1 adjacent to them is a commercial office  
2 building.

3 And then on the other side of our  
4 building to the right of us is an alleyway.  
5 And then you hit rowhouses.

6 So if I -- if someone were to ask  
7 me to describe it, I would say it would be a  
8 mixture of commercial and residential. There  
9 is definitely residential, absolutely.

10 CHAIRPERSON MILLER: Okay. I  
11 think this is my last question.  
12 Hypothetically, if a resident complained about  
13 the noise from your karaoke --

14 MR. SULLIVAN: Um-hum.

15 CHAIRPERSON MILLER: -- and your  
16 noise from your karaoke was actually within  
17 the noise ordinance, what would you do?

18 MR. SULLIVAN: I would discuss it  
19 with my management team in terms of how can we  
20 make sure that we adjust it, so that we can  
21 still meet the needs of what we are trying to  
22 do without disturbing the neighborhood.

1                   The Saturday and Sunday business,  
2                   for example, that I spoke of and during the  
3                   week we have a lot of business that emanates  
4                   from the Hill. Our Saturday and Sunday  
5                   business is not solely, but primarily from the  
6                   neighborhood. You know, we have some  
7                   tourists, but it's primarily from the  
8                   neighborhood.

9                   So as I have said, there is no  
10                  benefit to us to upsetting our neighbors. And  
11                  in this area, I think it's safe to say that  
12                  it's a close neighborhood and people talk.  
13                  And so it's fair to say that if one or two  
14                  people are not happy with us, then changes are  
15                  that's going to be shared and that's just a  
16                  detriment to our business.

17                  CHAIRPERSON MILLER: Okay. Great.  
18                  Thank you. All right. Any other questions?

19                  MEMBER RODRIGUEZ: Sure.

20                  CHAIRPERSON MILLER: Okay. Mr.  
21                  Rodriguez?

22                  MEMBER RODRIGUEZ: Yes, sir. You

1       said you have three restaurants in Washington,  
2       D.C.?

3               MR. SULLIVAN:   That are open,  
4       right.   And then the fourth that is about to  
5       open.

6               MEMBER RODRIGUEZ:   What's your  
7       record like with respect to complaints?

8               MR. SULLIVAN:   Specific to noise?  
9       So maybe if it will help, so we have a  
10      restaurant that is on Wisconsin Avenue by the  
11      Cathedral and to be fair, there is a  
12      residential component to it, but it's also the  
13      corner of Wisconsin and 10th Street and there  
14      are other restaurants in the area.

15              And so just to be totally candid,  
16      there is probably not as much of an  
17      opportunity for us to generate noise  
18      complaints, because really only one side of us  
19      has residences, a major intersection and other  
20      residences -- other restaurants.   Excuse me.  
21      So we don't generate a lot of noise  
22      complaints.

1                   Off the top of my head, I won't  
2                   say the word never, but off the top of my  
3                   head, I can't recall one in the recent past.  
4                   Our other restaurant that is in the District  
5                   is another Tortilla Coast, which is at 14th  
6                   and P. Again, a very commercial area. One  
7                   side has rowhouses, but then the other side is  
8                   the block with Whole Foods and banks.

9                   And in fact, we do have an  
10                  agreement with the neighborhood there and the  
11                  justification was that it was -- it used to be  
12                  McCormick Paint store, where we are now and so  
13                  the fact that it is a new restaurant, they  
14                  were concerned about the impacts to the  
15                  neighborhood because we were closer to the  
16                  residential portion than many of the other  
17                  commercial buildings. And so we agreed to  
18                  sign it.

19                  In fact, there was a stipulation  
20                  that said that after a year, if they have no  
21                  issues, then we could extend our hours, our  
22                  operating hours, because they constricted them

1 a little bit relative to what ABRA had allowed  
2 us to do.

3 And so I think the proof is that  
4 after a year, they agree that we can extend  
5 our hours because they have no problems.

6 MEMBER RODRIGUEZ: Okay. Now, is  
7 this the only restaurant that you have  
8 requested karaoke or an entertainment license?

9 MR. SULLIVAN: Yeah. It is other  
10 than the restaurant that is not yet open. We  
11 are nearing the end, I think, of the liquor  
12 license process. We have already gone through  
13 the protest period for the new restaurant,  
14 which includes an entertainment license. And  
15 now, we are just on to the administrative  
16 portion of it.

17 But of the existing operating  
18 restaurants, there is none other that have  
19 entertainment licenses.

20 MEMBER RODRIGUEZ: Okay. Thank  
21 you.

22 CHAIRPERSON MILLER: I just want

1 to follow-up to clarify who you are or  
2 whatever.

3 MR. SULLIVAN: Okay.

4 CHAIRPERSON MILLER: So did you  
5 say that Tortilla Coast is the same company  
6 that owns the Cactus Cantina?

7 MR. SULLIVAN: No, no. We have  
8 two Tortilla Coasts.

9 CHAIRPERSON MILLER: Oh.

10 MR. SULLIVAN: And then we have  
11 Cafe Deluxe.

12 CHAIRPERSON MILLER: Cafe Deluxe,  
13 oh.

14 MR. SULLIVAN: Which is right  
15 across from --

16 CHAIRPERSON MILLER: Okay.

17 MR. SULLIVAN: -- Cactus Cantina.

18 CHAIRPERSON MILLER: Okay. You  
19 can understand why I thought you were  
20 referring to Cactus. Okay. All right. Mr.  
21 Silverstein?

22 MEMBER SILVERSTEIN: No. I'm --

1 CHAIRPERSON MILLER: Oh, okay.

2 MR. FLAHAVEN: I don't --

3 CHAIRPERSON MILLER: Yes?

4 MR. FLAHAVEN: Can I ask a  
5 clarifying question based on any of those  
6 questions?

7 CHAIRPERSON MILLER: Yes, based on  
8 Board questions. Uh-huh.

9 MR. FLAHAVEN: Yes.

10 RECROSS-EXAMINATION

11 MR. FLAHAVEN: You mentioned as  
12 part of the question a new location going in  
13 at 22 and M Street. Can you characterize  
14 that? Is that a primary residential area or  
15 not?

16 MR. SULLIVAN: I don't know if I'm  
17 qualified to answer these questions. I would  
18 say that it has the Ritz Carlton and I have  
19 met with the residential board members from  
20 the Ritz Carlton. It's right across the  
21 street and then there is West 22, which is  
22 also a high-end residential building that is

1 diagonal. I met with them.

2 MR. FLAHAVEN: Um-hum.

3 MR. SULLIVAN: And so there is  
4 residences, but then there is also other --  
5 there is hotels and office buildings. And the  
6 degree to which it is mixed, but certainly  
7 there is enough residential that they have  
8 requested to sit down with us during the  
9 protest period to make sure that they were  
10 comfortable with it and what we can do.

11 MR. FLAHAVEN: And the only other  
12 question I have is just because there was a  
13 question about it, do you know how far the bar  
14 area is from the windows in the Tortilla Coast  
15 location at 400 1st Street, S.E.?

16 MR. SULLIVAN: Just a  
17 clarification. So when you say bar area, so  
18 it's about -- I'm estimating, so it's probably  
19 8 feet. 6 to 8 feet. So the way I would  
20 define it is we have a square bar area that is  
21 surrounded by this -- what we call the deck,  
22 which is the enclosed outdoor area. And so



1 from where that brick stops, which is really  
2 our bar area to the window, and I'm estimating  
3 because we have booths, which I know are 5  
4 feet long and then we have other tables. And  
5 so you need that 2 feet, so I'm going to  
6 estimate about 8 feet.

7 MR. FLAHAVEN: Okay. And then you  
8 mentioned --

9 MR. SULLIVAN: To 10 feet.

10 MR. FLAHAVEN: Yep. And then just  
11 one quick further question. You mentioned --  
12 I think it was the Chair asked that you have  
13 never had a noise complaint. And you kind of  
14 hedged on that. Can you -- are there noise  
15 complaints you are aware of at the location?

16 MR. SULLIVAN: If I -- what I said  
17 was if I used the word never, I shouldn't  
18 have. What I thought that I had said was that  
19 we do not have a significant record of noise  
20 complaints after 25 years.

21 Off the top of my head right now,  
22 and I'm not saying that they have never

1 occurred in the recent past, I cannot recall  
2 having received or been informed of a noise  
3 complaint and my managers are informed to let  
4 us know those issues.

5 MR. FLAHAVEN: Okay. And have you  
6 been located at that -- have you been at that  
7 location for 25 years?

8 MR. SULLIVAN: Well --

9 MR. FLAHAVEN: The Tortilla Coast,  
10 has it been at 400 1st Street, S.E., for 25  
11 years?

12 MR. SULLIVAN: Has that been at  
13 that location for 25 years? It has been at  
14 that location for roughly 20 years. So  
15 Tortilla Coast, the brand has been in place  
16 for 25 years. They were located on the Senate  
17 side and then they moved to the Hill side in  
18 the early '90s.

19 MR. FLAHAVEN: Okay. Thanks. No  
20 further.

21 CHAIRPERSON MILLER: Okay. So  
22 that's your case unless you have any documents

1       you want to put into evidence.

2                   MR. SULLIVAN: I do not.

3                   CHAIRPERSON MILLER: Okay. All  
4       right. So now it's time for the protestant's  
5       case.

6                   MR. FLAHAVEN: Yes, we would like  
7       to just call one witness and that's  
8       Commissioner Sara Loveland.

9                   CHAIRPERSON MILLER: Okay. So I  
10      just need to swear you in.  
11      Whereupon,

12                   SARA LOVELAND  
13      was called as a witness by Counsel for the  
14      protestant, and having been first duly sworn,  
15      assumed the witness stand and was examined and  
16      testified as follows:

17                   CHAIRPERSON MILLER: Okay. Good.

18                   DIRECT EXAMINATION

19                   MR. FLAHAVEN: Commissioner, can  
20      you just remind us of your role with ANC-6B?

21                   MS. LOVELAND: I'm the  
22      Commissioner for Single Member District 6B07

1 and I'm the Chair of 6B's Alcoholic Beverage  
2 Committee.

3 MEMBER SILVERSTEIN: For the  
4 record, could the witness identify herself?

5 MS. LOVELAND: Oh, I'm Sara  
6 Loveland.

7 MR. FLAHAVEN: Would you  
8 characterize 2013 as a particular busy year  
9 for ANC-6B in regard to license renewals and  
10 applications for ABC establishments?

11 MS. LOVELAND: Yes.

12 MR. FLAHAVEN: How many of the  
13 license applications that ANC-6B has  
14 considered have resulted in a Protest Hearing?

15 MS. LOVELAND: Zero, except for  
16 this one.

17 MR. FLAHAVEN: How many, roughly,  
18 license -- similar establishments to Tortilla  
19 Coast have license -- applications have we --  
20 renewals have we -- has ANC-6B considered in  
21 2013?

22 MS. LOVELAND: 58.

1                   MR. FLAHAVEN: Let me ask -- let  
2 me go to our Protestant Exhibit No. 2. They  
3 are related -- and I just want to ask about  
4 what these different types of -- there is  
5 obviously the calls for service report for MPD  
6 and what these different abbreviations mean.

7                   Can you tell me what the  
8 abbreviation DISO means?

9                   MS. LOVELAND: It's a disorderly  
10 conduct.

11                  MR. FLAHAVEN: Can you tell me  
12 what the abbreviation for INXP stands for?

13                  MS. LOVELAND: Indecent exposure.

14                  MR. FLAHAVEN: Can you tell me  
15 what ASSS, what that stands for?

16                  MS. LOVELAND: Simple assault.

17                  MR. FLAHAVEN: Can you tell me  
18 what FUGI stands for?

19                  MS. LOVELAND: That's a fugitive.

20                  MR. FLAHAVEN: And what BALM?

21                  MS. LOVELAND: That's a burglar  
22 alarm.

1                   MR. FLAHAVEN: All right. Now,  
2 would you, in looking at this record of calls  
3 for service, characterize this as a  
4 significant list of calls for service for an  
5 establishment in 6B?

6                   MS. LOVELAND: Anything beyond  
7 zero is significant, as far as we're  
8 concerned.

9                   MEMBER SILVERSTEIN: What was  
10 that?

11                  MS. LOVELAND: I said any number  
12 of calls above zero is significant, as far as  
13 we are concerned.

14                  MR. FLAHAVEN: And in looking at  
15 the calls for service, are a lot of the calls  
16 are they taking place while the establishment  
17 is open?

18                  MS. LOVELAND: Yes.

19                  MR. FLAHAVEN: Let me point you to  
20 our Protestant Exhibit No. 4. With the  
21 Chair's indulgence on this, can you tell me  
22 what our Exhibit No. 4 is?

1                   MS. LOVELAND: This is the  
2                   settlement agreement that we proposed between  
3                   ANC-6B and Tortilla Coast or Clover Capitol  
4                   Hill, LLC.

5                   MR. FLAHAVEN: Do you --

6                   CHAIRPERSON MILLER: So I don't  
7                   know where you are going with this. We don't  
8                   want to get into what was proposed and what  
9                   wasn't accepted.

10                  MR. FLAHAVEN: Well, what I'm  
11                  trying to show is one of the arguments in the  
12                  case has been that the settlement agreement is  
13                  duplicative to current regulations. I'm  
14                  trying to show that there are aspects of it  
15                  that are not.

16                  CHAIRPERSON MILLER: Okay.  
17                  Without -- okay. Don't get into at least what  
18                  he agreed to or didn't agree to. So you know,  
19                  there could be some things -- because we don't  
20                  want to know. Do you understand that?

21                  MR. FLAHAVEN: Right. I'm not  
22                  going into what he agreed to.

1 CHAIRPERSON MILLER: Okay.

2 MR. FLAHAVEN: I'm going to what  
3 in our settlement agreement is different than  
4 what is in current regulations.

5 CHAIRPERSON MILLER: Okay. All  
6 right.

7 MR. FLAHAVEN: Just to get at his  
8 claim of --

9 CHAIRPERSON MILLER: Well, that's  
10 okay.

11 MR. FLAHAVEN: -- duplicative --

12 CHAIRPERSON MILLER: All right.

13 MR. FLAHAVEN: All right. Looking  
14 at Section 3 or No. 3, I guess it's on the  
15 next page, Page 2, it looks like -- can you --  
16 it looks like there is a paragraph on extended  
17 hours. Is that something in our typical ANC-  
18 6B settlement agreements that goes beyond ABRA  
19 Regulations?

20 MS. LOVELAND: Yes.

21 MR. FLAHAVEN: Also looking at No.  
22 -- Section 7(d), Section (d) related to trash



1 disposal, is that something that goes beyond  
2 ABRA Regulations?

3 MS. LOVELAND: Yes.

4 MR. FLAHAVEN: Letter (e) in that  
5 same section, Section 7, commercial trash  
6 pickup, is that something that goes beyond  
7 ABRA Regulations?

8 MS. LOVELAND: Yes.

9 MR. FLAHAVEN: No. 8, rats and  
10 vermin control, is that something that goes  
11 beyond ABRA Regulations?

12 MS. LOVELAND: Yes.

13 MR. FLAHAVEN: I also want to  
14 point you to Protestant's Exhibit No. 5 and  
15 can you tell me what that exhibit is?

16 MS. LOVELAND: Exhibit 5 is the--

17 MR. SULLIVAN: Question?

18 CHAIRPERSON MILLER: Yes, I'm  
19 sorry. Wait. There is a question. Is there  
20 an objection?

21 MR. SULLIVAN: Well, I'm wondering  
22 how this is relevant to our application for an

1       entertainment license.

2                   CHAIRPERSON MILLER: Well, what  
3       did you just ask? Which is relevant, the  
4       settlement agreement or --

5                   MR. SULLIVAN: The items that are  
6       being mentioned. So for example, I don't see  
7       how it is relevant to our application for an  
8       entertainment license.

9                   MR. FLAHAVEN: Do you want me to  
10      respond?

11                  MR. SULLIVAN: My understanding is  
12      there was a protest because of concerns.

13                  CHAIRPERSON MILLER: Right.

14                  MR. SULLIVAN: And right now, it  
15      seems as though the protestant is focusing on  
16      a settlement agreement, which is not directly  
17      -- there is no direct correlation in terms of  
18      any protest or --

19                  CHAIRPERSON MILLER: Okay. So I  
20      was giving a little leeway, because we're not  
21      considering the settlement agreement per se  
22      and he was saying that there are certain items

1     that won't be covered by our laws. Okay. So  
2     that's what she identified.

3                 What you are saying is well, she  
4     didn't make the connection between them and an  
5     entertainment endorsement.

6                 MR. SULLIVAN: Well, and also are  
7     you saying just ABRA Laws or laws that we are  
8     subjected to as a business? So for example,  
9     health inspections, which do take -- have  
10    relevance. DCRA which does take into account  
11    noise, according to the statute as well as  
12    ABRA.

13                CHAIRPERSON MILLER: Okay. So  
14    that -- this is like -- this sounds like  
15    argument for closing or for whatever, but  
16    unless he is asking a question and you are  
17    going to object upon relevance --

18                MR. SULLIVAN: Can I object upon  
19    relevance?

20                CHAIRPERSON MILLER: You can. We  
21    already went by those already. They are  
22    already answered. But so if he asks a

1 question and you think it's not relevant, you  
2 can say objection, relevance and then we can  
3 deal with it right then and there before she  
4 answers.

5 MR. SULLIVAN: Okay.

6 CHAIRPERSON MILLER: Okay.

7 MR. SULLIVAN: All right.

8 CHAIRPERSON MILLER: What was the  
9 last question?

10 MR. FLAHAVEN: Well, this was -- I  
11 just asked the witness to tell me what Exhibit  
12 No. 5 is.

13 CHAIRPERSON MILLER: Okay.

14 MS. LOVELAND: Exhibit No. 5 is a  
15 letter from Advisory Neighborhood Commission  
16 2F to the Members of the ABC Board.

17 MR. FLAHAVEN: And can I also ask,  
18 also part of that, is there additional  
19 information attached to that letter?

20 MS. LOVELAND: Yes, there is a  
21 voluntary agreement, what is now known as a  
22 settlement agreement, but what was previously

1 known as a voluntary agreement between ANC-2F  
2 and Clover Logan Circle, LLC, which is  
3 Tortilla Coast.

4 MR. SULLIVAN: Objection.  
5 Relevance.

6 CHAIRPERSON MILLER: Okay. What's  
7 the relevance?

8 MR. FLAHAVEN: The relevance of it  
9 is that this is a case where the applicant has  
10 negotiated with Advisory Neighborhood  
11 Commission over concerns related to peace,  
12 order and quiet and I'm demonstrating in this  
13 negotiated agreement that they are -- there  
14 are -- those terms are in there. They are not  
15 -- that it's not that there are terms beyond  
16 what is in the regulation.

17 One of his crux of his argument is  
18 there is no reason to negotiate, because I'm  
19 already subject to ABRA Regulations.

20 CHAIRPERSON MILLER: I don't --  
21 well, there are lots of settlement agreements,  
22 so I don't understand either why it -- it

1 shows that -- you did show that. You did say  
2 that there are provisions in these settlement  
3 agreements that are not covered by ABC Law.

4 MR. FLAHAVEN: Right.

5 CHAIRPERSON MILLER: Broader laws,  
6 is that right?

7 MR. FLAHAVEN: Yeah. All right.  
8 Then I will not proceed on that line of  
9 questioning.

10 One moment, please.

11 CHAIRPERSON MILLER: Okay.

12 MR. FLAHAVEN: Oh, on the -- you  
13 are aware and I think it is stated in the  
14 Investigator's report that, and we have  
15 hopefully corrected that, there is a  
16 settlement agreement between -- it's part of  
17 the Board Order with Sonoma Restaurant and  
18 Wine Bar.

19 MS. LOVELAND: Yes.

20 MR. FLAHAVEN: Can you -- do you  
21 have the entertainment endorsement hours that  
22 are a part of that settlement agreement?

1 MS. LOVELAND: Yes. The  
2 entertainment hours, the endorsement hours for  
3 Sonoma are Sunday through Thursday, 7:00 a.m.  
4 to 2:00 a.m. and Friday and Saturday 7:00 a.m.  
5 to 3:00 a.m.

6 MR. FLAHAVEN: Okay. Do you --  
7 let me just ask a couple of final questions.  
8 One is in this process in your role as ABC  
9 Chair, were there diligent efforts to contact  
10 the applicant?

11 MS. LOVELAND: Yes.

12 MR. FLAHAVEN: And do you -- were  
13 you aware of efforts to negotiate on the  
14 issues of peace, order and quiet between the  
15 parties?

16 MS. LOVELAND: Yes.

17 MR. FLAHAVEN: Okay. And let me  
18 just ask, have you, at any point as a  
19 Commissioner, attempted -- or in your role as  
20 ABC Chair attempted to contact Tortilla Coast?

21 MS. LOVELAND: Yes.

22 MR. FLAHAVEN: Can you explain the

1 context of that contact?

2 MS. LOVELAND: Yes. I was calling  
3 to follow-up and see if they had received from  
4 Commissioner Garrison a copy of a sample  
5 settlement agreement and whether they had had  
6 a chance to review it.

7 MR. FLAHAVEN: Can you for the  
8 record just indicate who Commissioner Garrison  
9 is?

10 MS. LOVELAND: Commissioner  
11 Garrison is the Commissioner for the Single  
12 Member District where Tortilla Coast lies.

13 MR. FLAHAVEN: And were you able  
14 to get the information you needed when you  
15 contacted Tortilla Coast?

16 MS. LOVELAND: No, I was not.

17 MR. FLAHAVEN: Can you just  
18 describe specifically did they -- was there  
19 any attempt -- did they say they will get back  
20 to you? Any attempt to say they would follow-  
21 up with you?

22 MS. LOVELAND: I identified myself



1 as an ANC Commissioner, asked to speak to the  
2 manager on duty. I was privy to a  
3 conversation off of the phone between  
4 employees about who should take the call and  
5 then they hung up on me.

6 MR. FLAHAVEN: All right. No  
7 further questions.

8 CHAIRPERSON MILLER: Okay. Cross-  
9 exam?

10 MR. SULLIVAN: Yes, ma'am.

11 CHAIRPERSON MILLER: Okay.

12 CROSS-EXAMINATION

13 MR. SULLIVAN: Can you tell me who  
14 typically signs the settlement agreements?

15 MS. LOVELAND: The business owners  
16 or --

17 MR. SULLIVAN: Okay. So business  
18 owners.

19 MS. LOVELAND: For -- do you mean  
20 for the part of the establishment?

21 MR. SULLIVAN: Correct.

22 MS. LOVELAND: Yeah, it would be

1 the managing partner of the ownership entity  
2 or the business owner, if it's a sole  
3 ownership.

4 MR. SULLIVAN: So do managers that  
5 run the restaurant usually sign settlement  
6 agreements?

7 MS. LOVELAND: No.

8 MR. SULLIVAN: Okay. So is it  
9 usually a practice to call the restaurant and  
10 speak to a manager about the settlement  
11 agreement or do you usually reach out to the  
12 ownership?

13 MS. LOVELAND: Most of the time we  
14 don't have any contact information for the  
15 ownership group, beyond the establishment  
16 contact information.

17 MR. SULLIVAN: Okay. To your  
18 knowledge, did anyone else from the ANC try to  
19 reach out to the restaurant prior to you doing  
20 so about the settlement agreement?

21 MS. LOVELAND: Commissioner  
22 Garrison.

1                   MR. SULLIVAN:   Okay.   And do you  
2   know if Commissioner Garrison called and  
3   positioned the settlement agreement as  
4   something that they had to sign?

5                   MS. LOVELAND:   I'm not sure what  
6   the correspondence was.   I know that he, I  
7   believe, was physically in the establishment  
8   and left a copy of the agreement.   I don't  
9   know what conversations were had or with who.

10                  MR. SULLIVAN:   So you don't know  
11   the nature of how he tried to address that  
12   with the managers?

13                  MS. LOVELAND:   No, I was not  
14   present.   I'm not Commissioner Garrison.

15                  MR. SULLIVAN:   Okay.   When you  
16   referenced efforts to negotiate with the  
17   applicant as it relates to peace, order and  
18   quiet, was that specific to actual instances  
19   or was that as it relates to the settlement  
20   agreement?

21                  MS. LOVELAND:   As it relates to  
22   the settlement agreement and now also we view

1       them as two separate processes to the  
2       entertainment endorsement.

3               MR. SULLIVAN:   Okay.   So the point  
4       being as an ANC Commissioner, you have never  
5       reached out to us relative to specific  
6       incidents about noise complaints or issues?

7               MS. LOVELAND:   No.   The  
8       establishment is outside my SMD.

9               MR. SULLIVAN:   Okay.   So out of  
10      curiosity, if this is outside of your SMD, I'm  
11      just curious how you are the one that ended up  
12      contacting the establishment about the  
13      settlement agreement.

14              MS. LOVELAND:   I negotiate  
15      settlement agreements with all of the  
16      establishments within ANC-6B.   I don't deal  
17      with specific disputes from neighbors or  
18      between neighbors and establishments.

19              MR. SULLIVAN:   Okay.

20              MS. LOVELAND:   And the first -- in  
21      our ANC, the first sort of line of reasoning  
22      is to have the Single Member District

1 Commissioner be the person to bring to the  
2 table the establishments and the neighbors in  
3 the event of any issues.

4 MR. SULLIVAN: Okay. To our  
5 knowledge, has Commissioner Garrison contacted  
6 Tortilla Coast relative to specific incidents  
7 relative to noise?

8 MS. LOVELAND: Not to my  
9 knowledge.

10 MR. SULLIVAN: Okay. Are you  
11 familiar with the Noise Task Force in the  
12 District?

13 MS. LOVELAND: Yes.

14 MR. SULLIVAN: Do you know what  
15 that -- what the purpose of the Noise Task  
16 Force is to do?

17 MS. LOVELAND: I believe it is to  
18 monitor and cite noise violations.

19 MR. SULLIVAN: Are you familiar  
20 with DC Code Section 25-725(a)?

21 MS. LOVELAND: Intimately.

22 MR. SULLIVAN: And can you tell us

1       what exactly that is, that code?

2                   MS. LOVELAND:  It's a code that  
3       governs noise decibel -- decibel levels of  
4       noise for establishments offered in the  
5       District.

6                   MR. SULLIVAN:  And can you go any  
7       further in terms of how is that actually --  
8       how is that code enforced?

9                   MS. LOVELAND:  To my knowledge,  
10      the code has been very loosely enforced, which  
11      is why this Task Force was formed recently,  
12      because there was -- has been pretty much zero  
13      enforcement of that particular statute.

14                  MR. SULLIVAN:  Okay.  So in 2012,  
15      a Task Force was established so that the Code  
16      Section 25-725(a) would actually be enforced?

17                  MS. LOVELAND:  Um-hum.

18                  MR. SULLIVAN:  Okay.  To your  
19      knowledge, would that include items such as  
20      music emanating outside of a restaurant?

21                  MS. LOVELAND:  Yes.

22                  MR. SULLIVAN:  So relative to the

1 language in the settlement agreement that is  
2 not covered in the law, wouldn't this be --  
3 wouldn't the noise in the settlement  
4 agreement, the noise concerns in the  
5 settlement agreement be covered under DC Code  
6 Section 25-725?

7 MS. LOVELAND: Let's see, I'm not  
8 so sure how to answer that. We do have  
9 concerns beyond decibel readings, if that's  
10 what the question is. And some of the  
11 standards that are set out in 25-725, such as  
12 being able to hear them only in closed rooms  
13 and adjacent residences and things like that,  
14 we also go beyond that, because we govern a  
15 number of establishments that have summer  
16 gardens that are immediately adjacent to  
17 residences.

18 So in almost every instance where  
19 we have outdoor or semi-outdoor noise being  
20 generated by an establishment, ANC-6B seeks to  
21 go beyond where we are allowed, go a bit  
22 beyond to try to make sure that those parties

1 are satisfied.

2 MR. SULLIVAN: To your knowledge,  
3 does ABRA and DCRA, do they have different  
4 measurements in terms of noise violations?

5 MS. LOVELAND: I'm not sure if  
6 they are different from each other.

7 MR. SULLIVAN: Okay.

8 MS. LOVELAND: The decibel level,  
9 you mean?

10 MR. SULLIVAN: Where you can  
11 actually hear the noise. So you made the  
12 point about --

13 MS. LOVELAND: Oh, yes.

14 MR. SULLIVAN: -- inside the  
15 residences versus in the middle of the street.

16 MS. LOVELAND: Right.

17 MR. SULLIVAN: That you are -- so  
18 there is some ordinance in the city that says  
19 that you can't hear the noise beyond the  
20 middle of the street closest to you?

21 MS. LOVELAND: I'm not sure what  
22 the exact language is of where it is that you



1 are standing in the street, but I am aware of  
2 both language about the standing --  
3 positioning outside of the establishment in  
4 the street and then also being positioned in  
5 adjacent establishments or adjacent  
6 residences.

7 MR. SULLIVAN: Okay. Are you  
8 familiar with DCRA's Noise Regulations as it  
9 pertains to trash truck noise?

10 MS. LOVELAND: DCRA regulating  
11 trash trucks?

12 MR. SULLIVAN: Um-hum.

13 MS. LOVELAND: No.

14 MR. SULLIVAN: Okay. So you are  
15 not aware of the fact that it is regulated by  
16 the city, trash truck noise? With specific  
17 hours as to when it can occur?

18 MS. LOVELAND: Am I aware that  
19 there are regulations? Yes. I can't speak to  
20 what the regulations are specifically.

21 MR. SULLIVAN: Okay. So I believe  
22 there was a point made with the settlement

1       agreement supposedly covering areas that are  
2       not covered by the law. And one of them was  
3       trash pickup.

4                   MS. LOVELAND: Sure.

5                   MR. SULLIVAN: And so there is an  
6       ordinance in the city that says that trash  
7       truck -- there is trash truck noise --  
8       ordinances that say trash cannot be picked up  
9       during certain hours nor can it be -- create  
10      excessive noise.

11                  MS. LOVELAND: Yes. And I believe  
12      that our clause in the agreement is more  
13      stringent hours than what these say the hours  
14      are.

15                  MR. SULLIVAN: Actually, these  
16      hours are more stringent.

17                  CHAIRPERSON MILLER: Okay.

18                  MR. SULLIVAN: Okay.

19                  CHAIRPERSON MILLER: We just want  
20      to remind you that you are to be asking  
21      questions.

22                  MR. SULLIVAN: Okay. Okay. Is it

1 possible that the DCRA ordinance actually has  
2 more stringent hours than what is in the  
3 settlement agreement?

4 MS. LOVELAND: Anything is  
5 possible.

6 MR. SULLIVAN: Okay. So after  
7 discussing some of the noise ordinances,  
8 etcetera, do you think it is accurate to say  
9 that the settlement agreement goes outside the  
10 scope of laws that a business operator is  
11 actually obligated to follow?

12 MS. LOVELAND: Yes.

13 MR. FLAHAVEN: Can I object? He  
14 is talking about the settlement agreement. I  
15 thought we were talking about negotiation of  
16 the issues. I was going to make specific  
17 instances of that and I was -- he objected to  
18 my ability to go in and make these cases. Now  
19 he is going singularly through a settlement  
20 agreement in different pieces.

21 MR. SULLIVAN: Well --

22 CHAIRPERSON MILLER: All right.

1 Well, I'll tell you what I was thinking.

2 First of all, we don't want to hear actually  
3 who agreed to what.

4 MR. SULLIVAN: Right.

5 CHAIRPERSON MILLER: So that is  
6 off the table. No one is doing that. More  
7 specifically, I think there is a correlation  
8 between -- unless there isn't in this case,  
9 there should be a correlation between what you  
10 might have been trying to get in the  
11 settlement to protect peace, order and quiet  
12 and the condition here, the same reason that  
13 you would want that condition for peace, order  
14 and quiet.

15 But that isn't -- that is not on  
16 the table. So if he is asking a question  
17 about is it necessary or is it covered by law,  
18 which is what I think you were asking.

19 MR. SULLIVAN: Well, I think it  
20 gets to the crux of the argument, which is the  
21 concern understandably with peace, order and  
22 quiet and noise. And so I'm just asking if

1 the protestee is aware of all the ordinances  
2 that actually already do exist and the fact  
3 that there is a Task Force that was  
4 created --

5 CHAIRPERSON MILLER: Right.

6 MR. SULLIVAN: -- to address  
7 those.

8 MEMBER ALBERTI: Madam Chair, I'm  
9 confused.

10 CHAIRPERSON MILLER: Okay.

11 MEMBER ALBERTI: The licensee is  
12 referring to a settlement agreement. Now --

13 MR. SULLIVAN: I --

14 MEMBER ALBERTI: Now, wait, wait.  
15 I don't know what settlement agreement he is  
16 referring to. But if he is referring to the  
17 settlement agreement that was proposed by the  
18 ANC, then we are getting too close to the  
19 negotiations and we should not be touching on  
20 that.

21 Now, if he is referring to some  
22 settlement agreement that he signed with some

1 other ANC, that's fine.

2 MR. SULLIVAN: No. What I'm --

3 MEMBER ALBERTI: But my point is  
4 that these questions aren't very clear. And  
5 I'm ignoring them because I have no idea what  
6 settlement agreement you are referring to.

7 MR. SULLIVAN: I'm actually asking  
8 questions about whether or not the ANC is  
9 familiar with all the laws that are actually  
10 in place --

11 MEMBER ALBERTI: Yes, but you  
12 referred to --

13 MR. SULLIVAN: -- as relates to  
14 noise.

15 MEMBER ALBERTI: -- but when you  
16 referred to a settlement agreement, you say  
17 this settlement agreement is more stringent  
18 than this settlement agreement, I don't know  
19 what -- and you did that.

20 MR. SULLIVAN: I said --

21 MEMBER ALBERTI: You said is this  
22 law more -- is it possible this law is more

1       stringent than the settlement agreement? And  
2       I don't know what settlement agreement you are  
3       referring to.

4               MR. SULLIVAN: Sir, actually, I  
5       asked specifically about the noise ordinance.  
6       The witness was the one who said yes, that  
7       exists, but the -- she was the one who brought  
8       up the settlement agreement is more stringent.  
9       That's when I replied to her. My whole --

10              MEMBER ALBERTI: That's fine.

11              MR. SULLIVAN: -- anything, all  
12       the questions that I'm asking --

13              MEMBER ALBERTI: She says that,  
14       but you are asking the questions, you are in  
15       control.

16              MR. SULLIVAN: Okay.

17              MEMBER ALBERTI: And stay away  
18       from the settlement agreement. That's all I'm  
19       saying.

20              MR. SULLIVAN: So all the items --  
21       I hope it has been clear, all the items that  
22       I brought up don't have to have anything to do

1 with the settlement agreement.

2 CHAIRPERSON MILLER: Right.

3 MR. SULLIVAN: They are addressing  
4 the concerns.

5 MEMBER ALBERTI: I understand  
6 that. And when you do that, I understand  
7 perfectly well. Just stay away from the  
8 settlement agreement.

9 MR. SULLIVAN: Okay.

10 MEMBER ALBERTI: Is all I'm  
11 saying.

12 MR. SULLIVAN: Okay. So going to  
13 the calls that were received, for example,  
14 could you again explain to me FUGI, what that  
15 stands for?

16 MS. LOVELAND: Fugitive.

17 MR. SULLIVAN: And do you -- maybe  
18 it's an unfair question, but the nature of  
19 calls relative to fugitives, is that because  
20 of actions that take place inside of a  
21 restaurant? A person is -- all of a sudden a  
22 fugitive is created?



1 MS. LOVELAND: I'm not personally  
2 aware of any fugitive situations that were  
3 created in the restaurant. I would argue that  
4 a homicide committed in a restaurant could  
5 result in a fugitive. I'm not sure. I cannot  
6 at all speak to the specific circumstances of  
7 this incident that is cited on 11/2/13.

8 MR. SULLIVAN: So do you think  
9 it's possible that out of the 22 calls, there  
10 was a portion of those that were generated by  
11 the restaurant as a result of situations that  
12 they had no control over, other than to take  
13 control of the situation when it occurred in  
14 the restaurant?

15 So for example, someone walking in  
16 inebriated, a fugitive walking into the  
17 restaurant?

18 MS. LOVELAND: Yes, that's  
19 entirely possible.

20 MR. SULLIVAN: Is it also possible  
21 that the disorderly conduct or indecent  
22 exposure could result from someone outside of

1 the restaurant who wasn't even in the  
2 restaurant, but is called to that location,  
3 because that's where the person was located at  
4 that corner?

5 MS. LOVELAND: Yes, that's  
6 possible.

7 MR. SULLIVAN: Okay. So I just  
8 have to clarify. I think I asked this  
9 question, but I know it's not your specific  
10 area, but in your conversations with the ANC,  
11 because I know this has been discussed, the  
12 entertainment license has been discussed, at  
13 any of those discussions or meetings that you  
14 have had, has there been a conversation about  
15 specific issues as it relates to noise for  
16 Tortilla Coast?

17 MS. LOVELAND: Specific issues,  
18 historical issues you are asking, I believe?

19 MR. SULLIVAN: Something that has  
20 occurred right in the last month, two months,  
21 three months? Just someone stands up and says  
22 I protest this entertainment license because

1     just last week the noise was so loud emanating  
2     from that restaurant, I can't even imagine if  
3     they had an entertainment license?

4                   MS. LOVELAND:  We do look at what  
5     historical events have occurred and I think,  
6     in this instance, our primary concern was the  
7     fact that the establishment would be expanding  
8     service to include something that hasn't taken  
9     place previously.  So no historical record  
10    would be able to indicate what would happen in  
11    the future.

12                  MR. SULLIVAN:  Okay.  And then the  
13    last question is there was a protest that was  
14    lobbied because of concerns about noise,  
15    included in the exhibits is the call record of  
16    the last 14 months roughly, was this taken  
17    into consideration when you guys put in place  
18    your protest?

19                  MS. LOVELAND:  The protest of the?

20                  MR. SULLIVAN:  Of the  
21    entertainment license.

22                  MS. LOVELAND:  Yes.

1 MR. SULLIVAN: This was?

2 MS. LOVELAND: The calls for  
3 service and ABRA violations, yes.

4 MR. SULLIVAN: I don't know how to  
5 position this, because it's not a question, so  
6 I apologize, but -- and this has nothing to do  
7 with settlement agreement. But the protestee,  
8 when I spoke to him earlier this week said  
9 that --

10 CHAIRPERSON MILLER: Okay.

11 MR. SULLIVAN: -- he --

12 CHAIRPERSON MILLER: You can do  
13 that in your closing. You can make  
14 statements --

15 MR. SULLIVAN: Okay.

16 CHAIRPERSON MILLER: -- in your  
17 closing.

18 MR. SULLIVAN: Let me ask another  
19 question.

20 CHAIRPERSON MILLER: Okay.

21 MR. SULLIVAN: Do you know when  
22 you, your group received this list of calls?

1 MS. LOVELAND: This actually was  
2 last week. I mean, it's very close to the  
3 time stamp on it, 3/28 --

4 MR. SULLIVAN: And do you know  
5 when you all --

6 MS. LOVELAND: -- 14.

7 MR. SULLIVAN: -- when the ANC  
8 filed the protest of this entertainment  
9 license?

10 MS. LOVELAND: I'm sorry, I don't  
11 know the exact date. I mean, it's --

12 MR. SULLIVAN: Is it fair to say  
13 it was before 3/28?

14 MS. LOVELAND: Before receiving  
15 this copy, yes.

16 MR. SULLIVAN: Okay. So was there  
17 another way for you all to know what was on  
18 this list prior to receiving it?

19 MS. LOVELAND: I believe you are  
20 trying to imply that we didn't consider police  
21 record when we were filing the protest,  
22 because we didn't receive this piece of paper

1 and that would be incorrect.

2 MR. SULLIVAN: That's not what I'm  
3 trying to imply.

4 MS. LOVELAND: That's what I felt  
5 like answering.

6 MR. SULLIVAN: No further  
7 questions.

8 CHAIRPERSON MILLER: Okay.  
9 Questions by Board Members?

10 MEMBER ALBERTI: I do.

11 CHAIRPERSON MILLER: Yes.

12 MEMBER ALBERTI: Commissioner  
13 Loveland, from what I heard, I understand that  
14 there is a concern about noise with regards to  
15 the entertainment that would be provided. Are  
16 there any other issues that are of critical  
17 concern to the ANC in this protest?

18 MS. LOVELAND: I thought that we  
19 listed them pretty succinctly in the protest.  
20 Our main issues are that we have a lot of rat  
21 issues in Ward 6. Specifically, we described  
22 in sort of great detail how we are hosting a

1     rat summit.

2                   This establishment, while we are  
3     not accusing them of causing rat problems, is  
4     in one of the areas that contributes -- is  
5     listed as a hot zone. So we are taking very  
6     seriously in all of our establishments and the  
7     53 settlement agreements that we cited out of  
8     the 58 establishments the clauses about noise  
9     and rat control, because we have so many  
10    issues now. And we have had battles across  
11    the ANC of how to deal with establishments on  
12    these.

13                  MEMBER ALBERTI: All right. I'm  
14    going to ask you about others, but let's limit  
15    it to your top three. Noise being one, rodent  
16    issues. Is there another one that is in your  
17    top three of critical issues?

18                  MS. LOVELAND: Trash.

19                  MEMBER ALBERTI: Trash? What  
20    about trash?

21                  MS. LOVELAND: Trash, disposal of  
22    trash.

1 MEMBER ALBERTI: What about trash?

2 MS. LOVELAND: The hours of  
3 disposal of trash and then the manner of  
4 disposal of trash is one of our most  
5 frequently debated issues.

6 MEMBER ALBERTI: Okay. When do  
7 you not like to have trash collected?

8 MS. LOVELAND: So we list in our  
9 agreement some shortened hours and the trash  
10 collection. I apologize, this is 7:00 a.m. to  
11 7:00 p.m. and we do also ask in various forms  
12 of the agreement that, you know, trash be  
13 dumped outside after certain hours as well, so  
14 that you don't get that --

15 MEMBER ALBERTI: Recyclables.

16 MS. LOVELAND: -- big rush of --  
17 yes, the big noise of somebody dumping the bin  
18 later after closing.

19 MEMBER ALBERTI: Okay. With  
20 respect to the rodent issue, would it be fair  
21 to say that -- well, let's put it this way.  
22 If an establishment had an ongoing contract



1 with a rodent, pest control contractor, would  
2 that be sufficient to mitigate your concerns  
3 about rodents?

4 MS. LOVELAND: It would, but the  
5 ANC is no longer permitted to ask for  
6 evidence.

7 MEMBER ALBERTI: I didn't ask. I  
8 asked you would that be sufficient if they had  
9 an ongoing contract, would that be enough to  
10 mitigate your concern?

11 MS. LOVELAND: About rat  
12 abatement, yes.

13 MEMBER ALBERTI: Okay. Great.  
14 Now, with respect to noise, you heard the  
15 licensee say well, you know, we are not -- we  
16 are going to keep the windows closed whenever  
17 there is entertainment. Is that sufficient?  
18 Would that -- if he were to do that, would  
19 that be sufficient to mitigate your problem,  
20 your concern about the noise emanating from  
21 entertainment?

22 MS. LOVELAND: If we were to be

1 prescriptive, I personally would prefer  
2 speaker locations that were inside the  
3 original interior of the building as opposed  
4 to what they call "the deck," which was at one  
5 time simply deck that was then glassed in.

6 MEMBER ALBERTI: Okay. So simply  
7 closing the windows is not sufficient for you?  
8 You want speaker placement additionally? Is  
9 that what you --

10 MS. LOVELAND: And to be honest, I  
11 don't think that we want the business to have  
12 to close their windows during nice weather.  
13 I don't think -- that's not the goal of  
14 anybody here. The windows being open is what  
15 makes that area attractive for patrons on that  
16 corner. So it's not that that we are looking  
17 for. It's for a more prescriptive way to  
18 control the noise.

19 MEMBER ALBERTI: Do you know where  
20 you would want that speaker placement?

21 MS. LOVELAND: I think we have a  
22 couple of ideas on the interior. Within the

1 masonry structure of the building.

2 MEMBER ALBERTI: Within the  
3 masonry structure of the building.

4 MS. LOVELAND: Right.

5 MEMBER ALBERTI: And how would you  
6 -- how would that mitigate the problem? How  
7 would that prevent the noise from emanating  
8 outside?

9 MS. LOVELAND: I think it is --

10 MEMBER ALBERTI: I'm not familiar  
11 with the establishment.

12 MS. LOVELAND: I think it's not  
13 that that would 100 percent mitigate it. It's  
14 more that it would be more of a guarantee that  
15 you wouldn't have a Mariachi band right on the  
16 corner of, you know, 4th and -- or 1st and D  
17 with all the windows standing wide open, which  
18 might as well be somebody standing on the  
19 sidewalk deck.

20 MEMBER ALBERTI: So if they had a  
21 Mariachi band right inside the masonry  
22 structure, wouldn't sound emanate outside?

1 MS. LOVELAND: I think it still  
2 could potentially, yeah. Not as much as it  
3 would as if it were standing next to wide open  
4 sliding glass doors.

5 MEMBER ALBERTI: Why not as much.  
6 Tell me why not as much.

7 MS. LOVELAND: This is obviously  
8 not --

9 MEMBER ALBERTI: Are there walls?  
10 I mean, if there is -- are there -- you said  
11 within the masonry walls. Are there openings  
12 in that wall that open right onto the patio?

13 MS. LOVELAND: Yes.

14 MEMBER ALBERTI: So it's just the  
15 distance from the windows is what you are  
16 saying would mitigate your problem?

17 MS. LOVELAND: Right. And also,  
18 the downstairs room. They have another  
19 entertaining room downstairs. It's very --  
20 it's a nice and private room and we have no  
21 issues with anything going on there and they  
22 host a lot of private parties and events

1       there, I believe. So we have no issues with  
2       anything going on in the basement of the  
3       building.

4                   MEMBER ALBERTI: Okay. Thank you.  
5       This has been helpful. thank you.

6                   CHAIRPERSON MILLER: Others? All  
7       right. I have a few. Okay. So that was  
8       helpful. So I just want to continue with  
9       that. I mean, it sounds to me like you  
10      basically just don't want to hear loud music  
11      at certain times, I think at certain times or  
12      maybe at any time. I don't know.

13                   Like for instance on Cinco de  
14      Mayo, do you care if you hear a band outside  
15      at 6:00 in the evening?

16                   MS. LOVELAND: I'll be honest, me  
17      being in charge of ANC-6B's ABC Committee is  
18      a little bit like the fox in charge of the hen  
19      house. I enjoy live music. I enjoy bars. I  
20      patronize establishments in our ANC  
21      definitely. So none of this bothers me. And  
22      my particular taste isn't suited to Mariachi

1 bands or karaoke, so I wouldn't rather hear  
2 either of those, but that's a taste issue and  
3 again, I can't project it onto anyone.

4 CHAIRPERSON MILLER: Is there a  
5 difference in hours, if it's 6:00 or if it's  
6 1:00 in the morning?

7 MS. LOVELAND: Very much so for  
8 our constituents there is a difference  
9 between --

10 CHAIRPERSON MILLER: Okay.

11 MS. LOVELAND: -- 6:00 and between  
12 1:00. And I think we have no issues with the  
13 hours that they have proposed either.

14 CHAIRPERSON MILLER: Okay. So the  
15 hours aren't at issue. Yes, okay, I'll get  
16 closer. Okay. So I mean, from what I have  
17 heard from your dialogue with Mr. Alberti, it  
18 was basically possibly placement of speakers,  
19 that they be within the permanent part of the  
20 building as opposed to on the deck, where you  
21 were calling the deck park where the windows  
22 would open out.

1           Okay. So this is your opportunity  
2           here. If there are certain conditions that  
3           you would like us to consider so that the  
4           entertainment endorsement doesn't have an  
5           adverse impact on the community or peace,  
6           order and quiet, let us know.

7           So one is you're talking about  
8           speaker placement. Now, is there anything  
9           else? I mean, let me ask -- let me back up  
10          while you are thinking about that.

11          You mentioned two things that  
12          don't seem to have anything to do with  
13          entertainment endorsement, you know, rodent  
14          control and trash. Are you aware of what this  
15          licensee's practice is with respect to each of  
16          those areas? I mean, have there been loud  
17          noises from bottles being thrown into the  
18          trash? I mean, they have been doing this for  
19          a long time, you know. The entertainment  
20          endorsement doesn't really impact, I don't  
21          believe, trash and rodent control.

22          MS. LOVELAND: Right. I would

1     argue that the entertainment endorsement  
2     could, because largely they are requesting an  
3     entertainment endorsement to build business.  
4     The more business you have, the more bottles  
5     you have, the more trash you have.

6                   CHAIRPERSON MILLER:   Okay.

7                   MS. LOVELAND:   Potentially, the  
8     later people stay.

9                   CHAIRPERSON MILLER:   Okay.   That's  
10    possible.   Are you familiar what the practice  
11    has been at this establishment?

12                  MS. LOVELAND:   Of their specific  
13    establishment, I'm not.

14                  CHAIRPERSON MILLER:   Okay.

15                  MS. LOVELAND:   I am aware of the  
16    other two establishments that are on that  
17    alley contributing to rodent issue and also  
18    having issues managing their trash.   I don't  
19    believe that the applicant has specifically  
20    had any issues.   But as such, the neighbors  
21    are approaching it as a unified issue for this  
22    particular alley as the rat hot spot, right?



1 CHAIRPERSON MILLER: I mean, would  
2 you say that this has been a good operator?

3 MS. LOVELAND: I have never been  
4 in the establishment, so I can't comment --

5 CHAIRPERSON MILLER: Okay.

6 MS. LOVELAND: -- on how they  
7 operate.

8 CHAIRPERSON MILLER: Okay. You  
9 haven't had complaints though that they have  
10 been a bad operator?

11 MS. LOVELAND: I personally have  
12 not.

13 CHAIRPERSON MILLER: Okay. Mr.  
14 Silverstein, did you have a question?

15 MEMBER SILVERSTEIN: I have a  
16 couple questions. Thank you for your service,  
17 Commissioner.

18 Has this been a problem  
19 establishment for your ANC?

20 MS. LOVELAND: In the sense that  
21 it requires a lot of my time?

22 MEMBER SILVERSTEIN: Yeah.

1 MS. LOVELAND: Yes.

2 MEMBER SILVERSTEIN: And problems  
3 with trash, noise, rats?

4 MS. LOVELAND: Not particularly.

5 MEMBER SILVERSTEIN: Okay. They  
6 had a renewal a year ago, March 2013.

7 MS. LOVELAND: Yes.

8 MEMBER SILVERSTEIN: Did you  
9 protest?

10 MS. LOVELAND: I went to the Roll  
11 Call Hearing and I arrived like 10 minutes  
12 after the hearing started and wasn't aware  
13 that they had been called, although they were  
14 like the 40th establishment on the list. So  
15 then I waited through the Roll Call Hearing  
16 and afterwards asked if there was a chance  
17 that I could be heard.

18 We also petitioned for --

19 MEMBER SILVERSTEIN: So the ANC  
20 did protest it?

21 MS. LOVELAND: Yes.

22 MEMBER SILVERSTEIN: Why? What

1 was your reason?

2 MS. LOVELAND: I mean, we -- by  
3 principle, we will protest if we haven't been  
4 able to be engaged with the business at all in  
5 negotiating any sort of community contract.

6 MEMBER SILVERSTEIN: Oh, okay,  
7 that's it. Well, I see these, all of these,  
8 calls for service. Is this a dangerous place?

9 MS. LOVELAND: The corner of --

10 MEMBER SILVERSTEIN: No, the  
11 establishment.

12 MS. LOVELAND: Sure. I have no  
13 way to say whether the establishment is  
14 dangerous. It seems to be a lot of calls in  
15 a short time period.

16 MEMBER SILVERSTEIN: Would it be a  
17 safe place say for 12 or 15 or 20 Members of  
18 Congress to meet and conspire?

19 MS. LOVELAND: I have heard that  
20 they do.

21 MEMBER SILVERSTEIN: Oh.

22 MS. LOVELAND: I can't comment on

1     their safety, because they often travel with  
2     their own security.

3                 MEMBER SILVERSTEIN:   So in other  
4     words, when Mr. Cruz and his conspirators went  
5     there, they had to be escorted by security in  
6     order to be there safely?

7                 MS. LOVELAND:   I believe they are  
8     escorted most places.

9                 MEMBER SILVERSTEIN:   I guess to  
10    get away from the media perhaps that's the  
11    case.   But I mean some of these -- one of  
12    these is a DUI.   Was someone driving their car  
13    inside the restaurant drunk?

14                MS. LOVELAND:   No, I'm sure not.  
15    Although that has happened in the District, as  
16    I'm sure you are aware.

17                MEMBER SILVERSTEIN:   And we had a  
18    case here, I believe it was, two or three  
19    weeks ago where there were dozens of calls for  
20    service to an address and until we realized or  
21    the police who had gone through this said yes,  
22    but that's also a Metro stop and anyone who is

1 at that particular corner, that's the address  
2 that they give.

3 How do you know or does anyone  
4 know that in these disorderly or this flasher  
5 or whatever, that these weren't things that  
6 happened outside and that's the address that  
7 the police are giving?

8 MS. LOVELAND: I believe -- I  
9 mean, I think also the applicant asked that as  
10 well. I have no way to tell you where these  
11 occurred or whether they specifically involved  
12 patrons or people who had previously been  
13 patrons.

14 MEMBER SILVERSTEIN: And if there  
15 is an incident going on inside an  
16 establishment, would you rather that they not  
17 call, so that it not be on this list that they  
18 take, that their record is clear, that we  
19 don't have a record of it and perhaps the  
20 public would be at risk or would it be better  
21 -- would the public be better served if any  
22 licensee in any sketchy situation calls for

1 help?

2 MS. LOVELAND: I would -- yes. I  
3 would personally prefer that somebody call the  
4 police in any event of any -- and potentially  
5 some maybe miscommunication, but I think  
6 better to be safe than sorry. And also there  
7 must be five or six squad cars within a block  
8 of there at any given time.

9 MEMBER SILVERSTEIN: That's a  
10 point. It is an area that is both dangerous  
11 by its nature and safe by its nature, that  
12 anything can happen on the Hill, but that  
13 there is a lot of police protection. Thank  
14 you. No further questions.

15 MEMBER RODRIGUEZ: I have a  
16 question.

17 CHAIRPERSON MILLER: Okay. Mr.  
18 Rodriguez?

19 MEMBER RODRIGUEZ: Commissioner,  
20 one simple question here is is this  
21 establishment serving the interests of the  
22 community or not? The gentleman said that

1       that was one of the purposes of the  
2       establishment, to serve the needs of the  
3       community. It's a restaurant, right?

4               MS. LOVELAND: Sure. The  
5       community needs to eat and it serves that  
6       need.

7               MEMBER RODRIGUEZ: So you would  
8       say it is or it is not?

9               MS. LOVELAND: It is. I'm sorry?

10              MEMBER RODRIGUEZ: Is it serving  
11       the -- a need in the community?

12              MS. LOVELAND: Serving a need in  
13       the community?

14              MEMBER RODRIGUEZ: Yes.

15              MS. LOVELAND: Yes.

16              MEMBER RODRIGUEZ: And what would  
17       be that need?

18              MS. LOVELAND: Nourishment.

19              MEMBER RODRIGUEZ: Nourishment.

20       We hope, right? Okay. Jobs?

21              MS. LOVELAND: Yes.

22              MEMBER RODRIGUEZ: How many people

1 are employed there?

2 MS. LOVELAND: I don't know.

3 MEMBER RODRIGUEZ: Okay. That's  
4 all I have.

5 CHAIRPERSON MILLER: Any other  
6 Board questions? Okay. Are there questions  
7 on Board questions, starting with the  
8 applicant? Do you have any based on what the  
9 Board just asked.

10 MR. SULLIVAN: Only one follow-up.  
11 It is just a clarification.

12 RECROSS-EXAMINATION

13 MR. SULLIVAN: There was a  
14 question that does this restaurant take a lot  
15 of your time and you answered yes. What is  
16 that relative to in terms of the amount of  
17 time that you spend?

18 MS. LOVELAND: In all, we have had  
19 almost 70 establishments that have renewed  
20 licenses this year, so as the Board well  
21 knows, on a cyclical basis I can spend  
22 anywhere from 5 to 50, 5-0, hours in a given



1 month negotiating settlement agreements, doing  
2 research on establishments, meeting with the  
3 owners, things like that.

4 This is the only case we have  
5 taken to protest. And so I think it's  
6 probably over 100 hours of time to today.

7 MR. SULLIVAN: Okay. So the  
8 nature of your time is relative to this  
9 process, not any specific issues with the  
10 restaurant?

11 MS. LOVELAND: And relative to the  
12 fact that it takes away my time from other  
13 community issues.

14 MR. SULLIVAN: That's all.

15 CHAIRPERSON MILLER: Okay. Any  
16 other follow-up questions?

17 MR. FLAHAVEN: Yeah.

18 CHAIRPERSON MILLER: Okay.

19 REDIRECT-EXAMINATION

20 MR. FLAHAVEN: Just a couple.  
21 First, for Board Member Silverstein. The  
22 supplemental information that we provided as

1 part of our original notion, we will get to  
2 the question you asked about our protest and  
3 all that information, so you can get that.

4 When it -- let me just ask, the  
5 applicant asked a question about when ANC-6B  
6 received calls for service. And you -- when--  
7 did ANC-6B receive any other calls for service  
8 from MPD besides the one you mentioned?

9 MS. LOVELAND: Yes.

10 MR. FLAHAVEN: And was that -- did  
11 you have that available when the previous case  
12 -- or when the decision to protest was made by  
13 ANC-6B?

14 MS. LOVELAND: Yes.

15 MR. FLAHAVEN: Okay. Let me just  
16 ask, does the law address when bottles can be  
17 disposed?

18 MS. LOVELAND: No.

19 MR. FLAHAVEN: Does the law  
20 address the position of speakers in an  
21 establishment?

22 MS. LOVELAND: No.

1                   MR. FLAHAVEN: Does the law  
2 address whether windows can be open or closed  
3 and when they can be open and closed in the  
4 establishment?

5                   MS. LOVELAND: No.

6                   MR. FLAHAVEN: On -- and the only  
7 other question I have is on rat abatement. In  
8 addition to a contractor, are you aware of  
9 other establishments in ANC-6B who have done  
10 things beyond just get a -- have a contract  
11 with a rat company to handle the situation?

12                  MS. LOVELAND: Yes.

13                  MR. FLAHAVEN: Can you just give  
14 us an example of that in ANC-6B?

15                  MS. LOVELAND: Conversion to rat  
16 proof dumpsters; construction of enclosed --  
17 of entirely enclosed internal areas for trash  
18 and for recycling storage; other foundation  
19 work in order to be able to stop rat burrows  
20 and then beyond -- that's just beyond the  
21 regular treatment.

22                  MR. FLAHAVEN: And on the --

1 again, to the calls for service, have you  
2 received any information or evidence from the  
3 applicant related to the specific instances of  
4 the calls for service?

5 MS. LOVELAND: No.

6 MR. FLAHAVEN: So do you know  
7 exactly where -- whether the applicant's  
8 employees were the ones who made the calls for  
9 service?

10 MS. LOVELAND: No.

11 MR. FLAHAVEN: Do you know if the  
12 patrons at the restaurant made the calls for  
13 service?

14 MS. LOVELAND: No.

15 MR. FLAHAVEN: Have we seen any  
16 evidence that gives us any additional  
17 information about whether the calls for  
18 service were confusing and they came from the  
19 Metro stop?

20 MS. LOVELAND: No.

21 MR. FLAHAVEN: Okay. No further  
22 questions.

1 CHAIRPERSON MILLER: Okay. If  
2 there are no Board questions for this witness,  
3 you may be excused.

4 (Whereupon, witness was excused.)

5 CHAIRPERSON MILLER: Thank you  
6 very much.

7 MS. LOVELAND: Thanks.

8 MR. FLAHAVEN: That's all of our  
9 witnesses.

10 CHAIRPERSON MILLER: Okay. So do  
11 you rest your case or do you have any more  
12 documents that you want to put into the  
13 record? We had said we would take judicial  
14 notice of this stapled package that you gave  
15 us of the Court Orders, Board Orders. Okay.  
16 Is that it?

17 MR. FLAHAVEN: Yes.

18 CHAIRPERSON MILLER: All right.  
19 Then it's closing. The applicant goes first.  
20 Any closing remarks?

21 MR. SULLIVAN: I will -- I don't  
22 want to waste anyone's time being repetitive,

1     because I feel like I have already suggested  
2     and it's -- my perspective is that I  
3     understand concerns. I feel as though the  
4     questions that I have asked or the statements  
5     that I have made hopefully have shown that we  
6     have not had a -- I'm not going to use the  
7     word never, but we have not had an issue in  
8     the past relative to noise.

9                 So therefore, you know, I feel as  
10    though we have a proven track record and as  
11    everyone has agreed, our hours are reasonable.  
12    The request is reasonable. So I rest.

13                CHAIRPERSON MILLER: Okay. I just  
14    want to ask you one question. We don't do  
15    that so frequently, but since we are  
16    considering conditions in this case, then the  
17    suggestion was brought up about speaker  
18    placement in the permanent part of your  
19    building as opposed to the --

20                MR. SULLIVAN: Yeah.

21                CHAIRPERSON MILLER: -- I assume  
22    there is kind of like an indoor patio area.

1 MR. SULLIVAN: Right, right.

2 CHAIRPERSON MILLER: If you could  
3 just address that, so we know your position on  
4 it.

5 MR. SULLIVAN: So --

6 MEMBER ALBERTI: Madam Chair, if  
7 we go down this route, then the protestants  
8 have to have a chance to cross-examine  
9 whatever statements are made, whatever  
10 questions -- based on your question, because  
11 you are basically opening the questioning  
12 again.

13 CHAIRPERSON MILLER: Okay.

14 MEMBER ALBERTI: And --

15 CHAIRPERSON MILLER: All right.

16 MEMBER ALBERTI: -- you can't do  
17 that without offering the --

18 CHAIRPERSON MILLER: Well, then  
19 I'll offer them that.

20 MEMBER ALBERTI: -- protestants a  
21 chance to cross-examine.

22 CHAIRPERSON MILLER: I think that

1     when a condition has been proposed and --  
2     actually when a condition has been proposed on  
3     an applicant that they have -- should have an  
4     opportunity to respond. So if that's the --  
5     if you feel that you want the protestant to  
6     have an opportunity to cross on that one  
7     response, then fine. I mean, I just want due  
8     process for everybody. So --

9             MEMBER ALBERTI: Well, I object to  
10    this order. I object to this order of  
11    questioning in general. But if you are going  
12    to do it, then I would like to have them a  
13    chance --

14            CHAIRPERSON MILLER: Okay.

15            MEMBER ALBERTI: -- because this  
16    is very unusual and I --

17            CHAIRPERSON MILLER: Once in a  
18    while --

19            MEMBER ALBERTI: It's very  
20    unusual. I mean, both sides have rested and  
21    now we are opening again and so -- but you are  
22    in charge, so go ahead.



1 CHAIRPERSON MILLER: Do you have a  
2 succinct answer, even if it's a yes or no?

3 MR. SULLIVAN: The concern that I  
4 have is that since we have never had an  
5 entertainment license and we don't know  
6 exactly how we would operate it, there is the  
7 potential that I would prefer to keep the  
8 windows closed and be able to have speakers  
9 that are not just in the bar area, that may  
10 have the same result as if the speakers were  
11 in the bar area and the windows were still  
12 open.

13 It's hard to decipher what --

14 CHAIRPERSON MILLER: Okay. I  
15 gotcha.

16 MR. SULLIVAN: -- the best  
17 approach would be.

18 CHAIRPERSON MILLER: Okay. And do  
19 you feel that you need to ask a question on  
20 that?

21 RE-REDIRECT EXAMINATION

22 MR. FLAHAVEN: The only thing I

1 would ask, so it sounds like the condition is  
2 not acceptable to the applicant?

3 MR. SULLIVAN: At this point, I  
4 don't feel as though I can make a decision one  
5 way or the other because I have never had the  
6 opportunity to understand how it works.

7 CHAIRPERSON MILLER: Okay. Got  
8 it. Thank you. Okay. Closing?

9 MR. FLAHAVEN: All right. In this  
10 case, which I think we have laid out, the  
11 applicant is asking for an add-on to their  
12 license. They are asking for an entertainment  
13 endorsement. It is pretty clear that is going  
14 to increase noise. When you have live  
15 entertainment, you have karaoke, you have a  
16 Mariachi band, noise is going to go up.

17 And as the testimony has shown,  
18 both -- by both the Investigator and also  
19 Commissioner Loveland, that -- is that this is  
20 located in a residential area. There are  
21 residents close by to this location.

22 We have also presented evidence

1     that has shown that a significant portion of  
2     this building is a covered patio and that the  
3     windows slide open and we even presented  
4     evidence in exhibit that showed the windows  
5     open and the door open on a warm day.

6                 So I think it is pretty clear that  
7     there is going to be increased noise from the  
8     entertainment endorsement.

9                 We have also presented evidence  
10    around the fact that there have been  
11    activities and crimes related -- around or at  
12    the establishment. Unfortunately, the  
13    applicant has presented, even though there has  
14    been a claim of some recordkeeping in this  
15    area, there doesn't appear to be any evidence  
16    presented from his managers or from himself  
17    related to any documentation related to those  
18    incidents. It doesn't look like there was any  
19    research done on those incidents as well in  
20    preparation for this hearing.

21                So I understand that there is a  
22    lot of questions about them, but there is no

1 way for us to do that. And also it brings  
2 into question how much management of these  
3 issues is taking place at the establishment  
4 moving forward, particularly when they are  
5 again asking for an add-on to their license.

6 I think we have also established  
7 that there are things that are -- there are  
8 aspects of -- when an entertainment  
9 endorsement is requested, there are aspects of  
10 negotiations that happen that go beyond what  
11 is in current regulations and have  
12 demonstrated that.

13 And we feel that there are  
14 conditions such as speaker placement, other  
15 conditions related to the entertainment  
16 endorsement, the time and opening of windows,  
17 also potentially testing other things that we  
18 would have loved to have negotiated with the  
19 applicant prior to getting to this point.

20 And unfortunately, as it was  
21 clearly stated in the Investigator's report,  
22 the applicant had no interest in negotiating,

1 no interest in pursuing a settlement  
2 agreement. Essentially, just said call us if  
3 there is a problem.

4 I can tell you as a volunteer if  
5 we did that for all of our establishments at  
6 ANC-6B, we would have no time to do anything  
7 else. And for ANC-6B, the calls for service  
8 presented are, in our view, a significant list  
9 of calls for service and a significant  
10 concern.

11 And so finally, I will just add  
12 that it was our hope, obviously, always to  
13 avoid coming to this situation. We, as an  
14 ANC, and as Commissioner Loveland testified,  
15 this is the only Protest Hearing we have made  
16 it to with a significant number of  
17 applications in ANC-6B.

18 We work very hard to have a nice  
19 balance between encouraging businesses. We  
20 love the businesses in our commission area and  
21 also making sure that we are representing our  
22 constituents and making sure their concerns

1 are addressed.

2 In this case, the applicant is  
3 asking for an entertainment endorsement. He  
4 is asking for no conditions and can change  
5 things with the entertainment endorsement.  
6 They have said they anticipate just doing  
7 karaoke and a band on one day, Cinco de Mayo,  
8 but they can expand that without having to go  
9 back to the Board without an amendment and  
10 they are not interested in thinking -- any  
11 conditions related to that.

12 So with that, I think we -- as  
13 ANC-6B has successfully demonstrated or  
14 successfully given our case, we appreciate the  
15 Board's time and consideration of our  
16 arguments. And again, we encourage you to  
17 deny the entertainment endorsement by  
18 applicant. Thank you.

19 CHAIRPERSON MILLER: Okay. Thank  
20 you. So at this point then, I'm going to  
21 close the record, that means we are not going  
22 to take any more evidence into the record.

1 And I'm going to ask the parties if they wish  
2 to file proposed findings of fact and  
3 conclusions of law?

4 What that means is there will be a  
5 transcript available of these proceedings  
6 within about three weeks and parties have the  
7 opportunity to file like a legal brief setting  
8 forth the facts that the Board should find and  
9 conclusions of law that the Board should draw.

10 And this is not frequently done.  
11 Most parties don't feel they do need to, but  
12 if you would like to do it, it is your right  
13 to. So you would have 30 days, by the way,  
14 from when the transcript is available.

15 MR. FLAHAVEN: We don't have to  
16 indicate whether we would be willing to do  
17 that now, do we?

18 CHAIRPERSON MILLER: Well, you --

19 MEMBER RODRIGUEZ: Yes.

20 CHAIRPERSON MILLER: -- can waive  
21 your right now.

22 MR. FLAHAVEN: We can waive our

1 right now?

2 MEMBER SILVERSTEIN: 90 percent  
3 of --

4 CHAIRPERSON MILLER: Some people--

5 MEMBER SILVERSTEIN: -- the cases  
6 they do.

7 MEMBER JONES: Well, I think what  
8 your question was was do you have to indicate  
9 that now.

10 CHAIRPERSON MILLER: You have to--

11 MEMBER JONES: Was that your  
12 question?

13 MR. FLAHAVEN: Yes.

14 MEMBER JONES: Okay. So can we  
15 get a feedback?

16 CHAIRPERSON MILLER: The answer on  
17 that is you can waive it now and it is done  
18 and we know that you will get a decision  
19 within 90 days from now. But if you are not  
20 certain, some people do not waive their right  
21 to do so and then they notify the Board as  
22 soon as they know within the -- by the time



1 the transcript comes out, you know, whether  
2 they are going to do it or they are not going  
3 to do it.

4 MEMBER JONES: But we don't take  
5 that lightly.

6 MR. FLAHAVEN: Well --

7 MEMBER JONES: I don't take it  
8 lightly --

9 MR. FLAHAVEN: -- I --

10 MEMBER JONES: -- as an individual  
11 Board Member.

12 MEMBER ALBERTI: The licensee  
13 hasn't responded, so does the licensee want to  
14 waive?

15 CHAIRPERSON MILLER: Let me just  
16 say this. I mean, we can't put in any more  
17 evidence or anything, so, you know, the Board  
18 has all the facts and the Board knows the law.  
19 So for the most part, it's not done, but some  
20 parties feel like no, they want to, you know,  
21 make -- put it before the Board the way the  
22 Board should see the facts of the law. And

1     it's a lot of work and you can if you want to  
2     do that.

3                   MEMBER SILVERSTEIN: This is  
4     essentially your right to file a legal brief,  
5     which would state X, Y, Z was stated in the  
6     case. Title 25.703.1 of DCMR says that you  
7     must do this, that or the other thing. Such  
8     and such may be the controlling law. It is  
9     that type of a legal brief. You have a right  
10    to file it. 90-some percent of the cases or  
11    90 percent at least of the cases that we hear,  
12    they do not.

13                   So do you wish to do so?

14                   CHAIRPERSON MILLER: If you have  
15    ever looked on-line or whatever and seen a  
16    Board Order for one of these cases, it sets  
17    forth facts and then it sets forth conclusions  
18    of law. So that's what it would be.

19                   MEMBER ALBERTI: Why don't we give  
20    them a chance to answer instead of continuing  
21    to talk?

22                   MS. LOVELAND: He is first, right?

1                   MEMBER SILVERSTEIN: Mr. Sullivan?

2                   MEMBER ALBERTI: Well, look if one  
3 side waives, the other side can change their  
4 mind, but let's hear from both of you.  
5 Please, just give us an answer.

6                   MR. SULLIVAN: Okay. So it's  
7 either waive or not waive. So waive the right  
8 to be able to enter something after the fact,  
9 yes.

10                  CHAIRPERSON MILLER: Exactly.

11                  MR. SULLIVAN: And I'm sorry, but  
12 does it do --

13                  CHAIRPERSON MILLER: Go ahead.

14                  MR. SULLIVAN: -- so if I, for  
15 example, say that I would like to not waive  
16 it, does it do anything procedurally? Does it  
17 cause extra work?

18                  CHAIRPERSON MILLER: No. If you  
19 say you are going to waive right now, okay,  
20 then the Board can go deliberate and get your  
21 order started.

22                  MR. SULLIVAN: I see.

1 CHAIRPERSON MILLER: But if you  
2 say -- it's your right. If you don't want to  
3 waive it today --

4 MR. SULLIVAN: Then you don't go  
5 back and deliberate right now?

6 CHAIRPERSON MILLER: Exactly.

7 MR. SULLIVAN: You have to wait.

8 CHAIRPERSON MILLER: Exactly.

9 MR. SULLIVAN: I'll waive then.

10 CHAIRPERSON MILLER: Okay.

11 MEMBER ALBERTI: Okay.

12 MR. FLAHAVEN: All right. Since  
13 the applicant has waived, we will waive.

14 CHAIRPERSON MILLER: Okay. Most  
15 people waive it, so don't feel like, you know,  
16 it's a big deal. Okay. This is complex law  
17 that we need to have, you know, be briefed on.  
18 Okay. All right. So therefore, we will issue  
19 a decision within 90 days and we will  
20 deliberate in closed session on this.

21 And I would suggest, unless Board  
22 Members object, that we can vote on this in

1 conjunction with the other protest hearing  
2 that we are hearing this afternoon, that we  
3 can vote to deliberate in closed session on  
4 both of them later, unless --

5 MEMBER ALBERTI: Whatever.

6 CHAIRPERSON MILLER: -- someone  
7 wants me to do it now?

8 MEMBER SILVERSTEIN: Do it now.

9 CHAIRPERSON MILLER: You want me  
10 to do it now?

11 MEMBER SILVERSTEIN: Yes.

12 CHAIRPERSON MILLER: Okay. I have  
13 a request that we vote now on this specific  
14 case.

15 MEMBER SILVERSTEIN: It's not on  
16 deciding the case, but to --

17 CHAIRPERSON MILLER: Do it in  
18 closed session.

19 MEMBER SILVERSTEIN: --  
20 deliberate.

21 CHAIRPERSON MILLER: Okay.

22 MEMBER ALBERTI: It's a formality.

1                   CHAIRPERSON MILLER:   As  
2   Chairperson of the Alcoholic Beverage Control  
3   Board for the District of Columbia and in  
4   accordance with Section 405 of the Open  
5   Meetings Amendment Act of 2010, I move that  
6   the ABC Board hold a closed meeting for the  
7   purpose of seeking legal advice from our  
8   counsel on Case No. 13-PRO-00165, Tortilla  
9   Coast, per Section 405(b)(4) of the Open  
10   Meetings Amendment Act of 2010, and  
11   deliberating upon Tortilla Coast for the  
12   reasons cited in Section 405(b)(13) of the  
13   Open Meetings Amendment Act of 2010.

14                   Is there a second?

15                   MEMBER RODRIGUEZ:   Second.

16                   CHAIRPERSON MILLER:   Mr. Rodriguez  
17   has seconded the motion.   I'll now take a roll  
18   call vote on the motion before us now that it  
19   has been seconded.

20                   Mr. Brooks?

21                   MEMBER BROOKS:   I agree.

22                   CHAIRPERSON MILLER:   Mr. Alberti?

1 MEMBER ALBERTI: I agree.

2 CHAIRPERSON MILLER: Mr.

3 Rodriguez?

4 MEMBER RODRIGUEZ: I agree.

5 CHAIRPERSON MILLER: Ms. Miller

6 agrees.

7 Mr. Silverstein?

8 MEMBER SILVERSTEIN: I agree.

9 CHAIRPERSON MILLER: Mr. Short?

10 MEMBER SHORT: I agree.

11 CHAIRPERSON MILLER: Mr. Jones?

12 MEMBER JONES: I agree.

13 CHAIRPERSON MILLER: Okay. It

14 appears that the motion has passed by a 7-0-0

15 vote.

16 I hereby give notice that the ABC

17 Board will hold a closed meeting in the ABC

18 Board conference room to deliberate this case

19 pursuant to the Open Meetings Amendment Act of

20 2010 and we will issue an order within 90

21 days.

22 MR. FLAHAVEN: Thank you.

1 CHAIRPERSON MILLER: Thank you.

2 MR. SULLIVAN: Thank you.

3 MS. LOVELAND: Thank you.

4 MEMBER SILVERSTEIN: And, Mr.

5 Flahaven, Mr. Sullivan, thank you very much.

6 This went two hours and 15 minutes, which is  
7 the most expeditious hearing we have had this  
8 year of a Protest Hearing. Thank you both  
9 very much.

10 CHAIRPERSON MILLER: Protest  
11 Hearing, Protest Hearing. Right, exactly. I  
12 think we are going to take a five minute break  
13 before the next hearing.

14 (Whereupon, the Protest Hearing in  
15 the above-entitled matter was concluded at  
16 4:10 p.m.)

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